

SHULMAN ROGERS GANDAL PORDY & ECKER, P.A.

Lawrence A. Shulman
Donald R. Rogers
Karl L. Ecker†
David A. Pordy*
David D. Freishtat
Martin P. Schaffer
Christopher C. Roberts
Jeffrey A. Shane
Edward M. Hanson, Jr.
David M. Kochanski
James M. Kefauver
Robert B. Canter
Daniel S. Krakower
Kevin P. Kennedy
Alan B. Sarnstein
Nancy P. Regelin
Samuel M. Spirito*

Martin Levine
Worthington H. Talcott, Jr.*
Fred S. Sommer
Morton A. Falter
Alan S. Tilles
James M. Hoffman
Michael V. Nakamura
Jey M. Eisenberg*
Douglas K. Hirsch
Ross D. Cooper
Glenn C. Erickson
Karl J. Protel, Jr.*
Timothy Dugan*
Kim Viti Fiorentino
Sean P. Sherman*
Gregory D. Grant*
Jacob S. Frankel*

Rebecca Oshorow
Ashley Joel Gardner
Michael J. Froehlich
William C. Davis, III
Patrick M. Murryn
Sandy David Baron
Christine M. Sorge
Michael L. Kabik
Jeffrey W. Rubin
Simon M. Nadler
Scott D. Muscles
Karl W. Means
Debra S. Friedman*
Matthew M. Moore*
Daniel H. Handman
Eric J. von Vorys
Michelle R. Curtis*

Gary L. Horowitz
Cara A. Frye*
Heather L. Howard
Stephen A. Ment
Hong Suk "Paul" Chung
Lisa C. DeLesso*
Patrick J. Howley
Glenn W.D. Golding*
Carmen J. Morgan*
Kristin E. Draper
Heather L. Spurrer*
Melissa G. Bernstein
Patricia Teck
Robert L. Ritter*
Daniel H. Anix
Jacob A. Ginsberg
Meryl A. Kessler*

John D. Sadler
Of Counsel
Larry N. Gandal
Leonard R. Goldstein
Richard P. Meyer*
William Robert King
Larry A. Gordon*
David E. Weisman
Lawrence Eisenberg
Deborah L. Moran
Mimi L. Magy
Scott D. Field
Special Counsel
Philip R. Hochberg*
Maryland and D.C.
except as noted:
* Virginia also * D.C. only
* Maryland only † Retired

Writer's Direct Dial Number:

(301) 230-5228

tdugan@srgpe.com

April 14, 2005

The Honorable Derick Berlage
Chair, The Montgomery County Planning Board
The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Clarksburg Town Center
Building Height Compliance

Dear Mr. Berlage and Members of the Planning Board:

We represent Craftstar Homes ("Craftstar") one of the owners and builders of the Clarksburg Town Center. We disagree with the assertions contained in the January 25, 2005 letter from the Clarksburg Town Center Advisory Committee ("CTCAC"). We request the Planning Board dismiss the complaint for failure to establish that a site plan violation has occurred.

1) Incorporate by Reference

As grounds, we agree with, and incorporate by reference, the positions of the M-NCPPC Planning Staff reports included with the April 8, 2005 Staff Memorandum, and the arguments of Bozzuto Homes, Inc. and NNPII-Clarksburg L.L.C. contained in the March 4, 2005 and March 8, 2005 letters from their legal counsel, attached to the Staff report as Exhibits E and F. We wish to augment their points.

2) Stay the Course. Preserve the County's Reputation for Certainty

Apart from the various other arguments that justify rejecting the CTAC's claims to roll back the clock, at least seven years, the Planning Board should take steps to preserve Montgomery County's reputation for certainty by affirming the long-standing interpretation of the Site Plan conditions of approval. Numerous homes have been built. Many parties and government officials, acting in good faith, have applied the Site Plan conditions of approval as to height with no apparent harm. The

County's reputation would be tarnished if a single parenthetical phrase, inserted as an illustration, now rises like the 17 year locusts and destroys that certainty.

3) The CTCAC Is Too Late To Make Its Assertions

For many reasons explained below, the 1998 Site Plan, over seven years ago, eliminated any notion or allegation that the 45 feet dimension was an independent requirement. The time to appeal the elimination passed thirty days after the Planning Board's Site Plan Opinion was mailed. The facts are that the Project Plan's data chart was modified by the subsequent Site Plan. Unless the CTCAC is alleging some sort of fraud or illegal dealing, the 45 feet illustrative parenthetical remains just that -- an illustration. Any argument that the elimination was an oversight should be rejected, also. Seven years is too long a time period to allow such a burdensome hardship to be resurrected and imposed.

Accordingly, the CTCAC has no standing to initiate any modification of the Site Plan conditions of approval for land in which it has no interest, either retroactive or *in futuro*. Even the most liberal standing rules do not allow *anyone* to move to modify another person's vested rights after the appeal period has expired.

Therefore, based upon the Administrative Procedures Act, the CTCAC has no standing to make the claims that it is making. The Planning Board should reject the complaint as being seven years too late.

Setting aside what we believe to be the dispositive issue before the Planning Board, we explain other reasons why the CTCAC's claim should be rejected.

4) A Project Plan is Not a Site Plan Disguised as a Project Plan

In essence, the folks at CTCAC are arguing erroneously that a project plan, even a resurrected one, is really a *site plan*, disguised as a project plan. It is not.

5) Imposing a Rigid 45 Feet Standard Produces No Benefit and Causes Temendous Hardship

Before augmenting the arguments that the others have clearly explained, we ask the Planning Board to consider the empty benefit to be derived from the CTCAC's remedy. The CTCAC is arguing that they do not wish to disrupt the homes and lives of its neighbors, and that they wish to modify future homes, as if such a course of action is not a substantial hardship to all involved. The remedy would involve delays to individuals moving into their homes and substantial revisions to architectural plans and numerous other professional work products. It is not warranted by the outcome that the CTCAC requests, even if the CTCAC were correct. To justify the effort, the existing Clarksburg Town Center would have to be somehow out of character or form from the Master Plan's concept to warrant such a draconian measure. If the existing Clarksburg Town Center is attractive, which it is, even if one considers only the substantial demand for homes there, then, the proposed cure would accomplish nothing but hardship. As will be explained by Craftstar's architect, imposing the rigid

45 feet limit will not somehow transform the Town into a better place. The units would be very difficult or impossible to design at such dimension and still maintain the Town's character and the product's attractiveness to homebuyers.

6) The 45 Feet Dimension Has No Inherent Value

Further, in order to justify imposing the abstract 45 feet dimension, the Planning Board should seriously consider what inherent, essential essence, is imparted by the magic 45 feet. The complaint should be dismissed on such grounds alone.

7) The 45 Feet Dimension Was Only Illustrative

In this paragraph, we add to the other explanations that urge the Planning Board to continue the interpretation that has been followed for many years now, and find that only the four stories height is controlling. On page 8 of the June 12, 1995 Project Plan Opinion, the preamble to "Findings 1" is as follows:

Conforms with the Requirements and Intent of the RMX-2 Zone

The Planning Board finds that Project Plan #9-94004, as conditioned, meets all of the purposes and requirements of the RMX-2 Zone. A summary follows that compares the development standards shown with the development standards required in the RMX-2 Zone.

(Emphasis added.)

The above term "shown" is equivalent to the term "proposed" used on page 9 of the Opinion. The term "required" is used on both page 8 and page 9. The only conclusion is that "proposed" means "shown." Proposed is illustrative. Accordingly, the meaning for the information under "proposed" of "4 stories (45 ft.)" is that the project plan shows or illustrates, as a way of explanation only, one approximate dimension of a 4 story residential building.

By analogy, in the case of a development plan, which is similar to a project plan, an effort is made to distinguish between what is binding and what is illustrative. Typically the site plan issues shown are illustrative, not binding, because they are more properly addressed at site plan. We believe that the same principal should apply in the current case.¹

¹ We agree with the application of the following cases in support of a project plan not imposing rigid, immutable, standards, and the analogy of a project plan with a development plan as having the same relation to a site plan. Logan v. Town of Somerset, 271 Md. 42, 57-58, 314 A.2d 436, 444 (1974) (construction and maintenance of swimming pool was "consistent and compatible" with using the land for park purposes); MacDonald v. Board of County Comm'rs for Prince George's County, 238 Md. 549, 556, 210 A.2d 325, 328 (1965) (construction of various improvements "are as consistent with increased rural residential development as they are with the building of highrise apartments"); Montgomery County v. Greater Colesville Citizens Ass'n, Inc., 70 Md. App. 374, 386-87, 521 A.2d 770, 777 (1987) ("[t]he site plan must be consistent with the approved development plan") (emphasis added).

8) The Master Plan Fundamentals Are Based Upon Four Stories, Not 45 Feet and Ignoring the 45 Feet Does Not Upset the Historic District.

No one disputes that the Master Plan, at page 46, recommends a general 4 story height only. No one disputes that it recommends even higher heights, up to six to eight stories, near the transit station and the historic district, if found compatible. Consequently, the eight story recommendation in proximity to the historic district disposes of the CTCAC's argument that variances from a 45 feet dimension would upset the delicate balance of elements holding the Clarksburg Town Center together, especially the historic district.

9) The Zoning Ordinance Anticipates that A Project Plan Will Be Modified By the Site Plan

Further, CTCAC's complaint should be dismissed because, taken to its logical conclusion, one must strictly follow every single "shown" or "proposed" development standard, such as an illustrative 45 feet parenthetical. Thus, no site plan may alter *any* of the project plan numbers "shown" or "proposed." That position is contrary to *common sense* and to the *Zoning Ordinance's statutory scheme*.

a) Common Sense

From a common sense standpoint, applying such a strict interpretation would generate absurd outcomes. It would mean that every word and every number in the Project Plan Opinion is "fundamental" to the project plan.

It is unreasonable to assume that at a Project Plan stage, where the gross number of dwelling units, commercial square feet and other "macro" items are being considered, that a microscopic level of detail, such as a 45 feet dimension, without any further explanation, would also control. It would be unreasonable to expect an applicant to commit to such a dimension, with no further detail, at the Project Plan stage.

The passing reference accorded the 45 feet illustration supports its irrelevance as a binding condition. The Project Plan Opinion lists fourteen (14) "Conditions [of approval]" that span six (6) pages. None of the conditions reference a numerical height limit. Conditions of approval are the fundamental underpinnings of the approval that must be carried forward to Site Plan. The "Findings" span four (4) pages. Only the single parenthetical references the 45 feet dimension. Findings do not rise to the same level of exactitude for the subsequent Site Plan. Accordingly, the posture of the height matter generally within the Project Plan Opinion does not support CTCAC's argument. Again, the project plan is not intended to be a site plan disguised as a project plan.

b) The Zoning Ordinance Anticipates that the Site Plan Will Modify the Project Plan

Further, the Zoning Ordinance anticipates that the Site Plan will modify or not follow all Project Plan elements. To conclude otherwise would eviscerate the

Zoning Ordinance provision concerning minor project plan amendments that the Planning Staff is authorized to grant. Basic statutory construction dictates that the Minor Plan Amendment provision is in the Ordinance for a reason. One reason is that the legislature expected that project plan language need not be applied rigidly, and provided an avenue to vary from it. Therefore, it is impossible to argue that every single word and number in every project plan opinion is expected to be "fundamental."

(a) 45 Feet is Not Fundamental to the Project Plan

The term "fundamental" is used because it indicates the nature of the project elements that only the Planning Board can change.

Under Section 59-D-2.6(a)(1), "Minor Plan Amendment," it provides:

A minor amendment is an amendment or revision to a plan or any findings, conclusions, or conditions associated with the plan that does not entail matters that are fundamental determinations assigned to the Planning Board. A minor amendment is an amendment that does not alter the intent, objectives, or requirements expressed or imposed by the Planning Board in its review of the plan. A minor amendment may be approved, in writing, by the Planning Board staff. Such amendments are deemed to be administrative in nature and concern only matters that are not in conflict with the Board's prior action.

(Emphasis added.)

The provision's existence, itself, that allows the Planning Staff authority to grant minor amendments dilutes the CTCAC's rigid 45 feet argument, because the statute itself establishes a "grey area" within which the Planning Staff is authorized to exercise some judgment, without the Planning Board's approval, specific or otherwise.

Thus, the CTCAC's complaint must be dismissed because it is unreasonable to conclude that the 45 feet height dimension was "fundamental" to the Planning Board's decision. The context of the 45 feet dimension in the Master Plan and Project Plan approval, and in the physical context of the existing town, establish that it is not "fundamental."

First, expressly stated recommendations in the Master Plan necessarily would have to be respected as fundamental. The 45 feet dimension does not fall within the category. The 45 feet is not mentioned in the Master Plan. Thus, enforcing the 45 feet is not

required to ensure that the Master Plan's recommendations are safeguarded. Only the four story recommendation is required.

Second, the physical appearance and general layout of the Clarksburg Town Center itself is evidence that the 45 feet is not "fundamental." Four story homes exceed the CTCAC's rigid 45 feet, yet, the Town is attractive and well-laid out. Thus, the Town's existing look and feel are evidence that 45 feet is not fundamental.

Third, as noted in other correspondence, the Master Plan provided a geographic buffer to preserve the Historic District, within which certain heights were limited to two stories. Even still, the Master Plan, at page 46, notes that those areas within walking distance of the transitway could be approved for up to six to eight stories. Surely, if the Master Plan recognized that such heights could be found to be compatible with the Historic District, then it is not reasonable to argue that the Planning Board would find that a 45 feet numerical height limit was a fundamental element to ensure the integrity of the Historic District.

Fourth, the Opinion contains only the single, 45 feet parenthetical reference only as something being "shown" or "proposed." Certainly, the lack of emphasis argues for the element not being "fundamental."

Finally, because the 45 feet was not a "fundamental" element of the Project Plan, the Planning Staff was well within its authority to modify the Project Plan by eliminating the dimension from the Site Plan review and the Site Plan Opinion. Determining, almost seven years later (from January 1998 to April 2005) the process whereby "45 feet" was removed from the data table is unnecessary. The 45 feet is not fundamental to the Project Plan. The Project Plan was modified through a minor ministerial amendment by the Planning Staff, in the course of its review and recommendations for the Site Plan application.² If the Project Plan were not modified by the Planning Staff, as a "Minor Plan Amendment," then the Planning Board modified the Project Plan by virtue of the Planning Board approving the Site Plan, as a "Major Modification," in the course of an public process where all concerned parties were invited to participate.³ After seven years, the Planning Board should make such a practical finding.

² See Section 59-D-2.6(a)(1), Minor Plan Amendment. A minor amendment is [one] that does not entail matters that are fundamental determinations assigned to the Planning Board. A minor amendment may be approved, in writing, by the Planning Board staff.

³ See Section 59-D-2.6(b)(1), Major Plan Amendment. Any action taken by the Planning Board to amend or revise a previously approved plan, whether such amendment is limited or comprehensive in scope, will be considered a major plan amendment.

(2) Similarly, The Zoning Ordinance, Under Section 59-D-3, Does not Require that the Site Plan Rigidly Follow the Project Plan

We reiterate for emphasis a related and important point included elsewhere in the record. By the language of the statute itself, a site plan does not have to strictly adhere to a project plan, provision by provision. A site plan's level of compliance with a project plan is only that it must be "consistent with a project plan," under Section 59-D-3.1(c). In contrast, a much higher standard applies to a site plan. Under Section 59-D-3.5, it provides, "No sediment control permit, building permit or use-and-occupancy permit may be issued unless it is in strict compliance with an approved site plan." Surely, the different language, both used under Section 59-D-3, was intended to provide for different levels of compliance. Thus, even if the 45 feet rose to the level of a requirement in the project plan, the site plans must only be "consistent" with the dimension. It would be the CTCAC's impossible burden of proof to establish not only that the site plan did not include the dimension, but also that when considering the site plan application as a whole, merely including the term "four stories" established a site plan application that was somehow a significant departure from the project plan. The CTCAC cannot merely argue that something is missing between the two.

10) Imposing 45 Feet Would Not Accommodate the Overall Topography

The four story dimension anticipates fitting the homes on natural topography. The 45 feet dimension does not. The four story height recommendation in both the Master Plan and in the Project Plan makes sense because it accounts for topography. Applying a rigid 45 feet height limit would produce impossible results. A home to be located on an a grade sloping upward from the street would have to be shorter than one located on a flat grade. A four story structure would be more capable of respecting the natural topography.

The record does not indicate that the 45 feet was made with reference to a "zoning" height limitation, where a "terrace" definition might, possibly, be added to the structure's dimension.⁴ We would have to assume, without any language, that the illustrative dimension of 45 feet is a zoning height, that accounts for a "terrace." However, the application of a "terrace" at the Project Plan stage of approval would be

⁴ Section 59-A-2.1. Height of building: The vertical distance measured from the level of approved street grade opposite the middle of the front of a building to the highest point of roof surface of a flat roof; to the mean height level between eaves and ridge of a gable, hip, mansard, or gambrel roof; except, that if a building is located on a terrace, the height above the street grade may be increased by the height of the terrace. In the case of a building set back from the street line 35 feet or more, the building height is measured from the average elevation of finished ground surface along the front of the building. On corner lots exceeding 20,000 square feet in area, the height of the building may be measured from either adjoining curb grade. For lots extending through from street to street, the height may be measured from either curb grade.

a very uncertain condition to rely upon for planning an entire town. More language would have been required to be included in the Project Plan to convert an illustrative dimension to a rigid one. Alternatively, a builder or developer would also have to assume that the 45 feet is the distance from finished grade, which is another assumption that is not evident from the record. In the absence in the record of the Planning Board affirmatively imposing the 45 feet as a rigid rule, the Planning Board should, and is able to, rely on its common sense. Four stories is reasonable. It accounts for the basic size of the structure and allows for variable topography.

11) Shunning Ulterior Motives

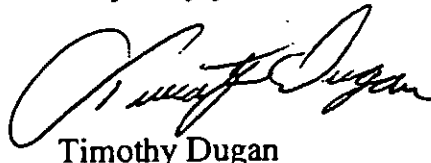
Finally, we are concerned about the lurking issue raised in Exhibit S, by Ms. Elizabeth Forrest, which alleges that the CTCAC is raising the height issue merely to force a compromise on an unrelated issue surrounding the retail center. The Planning Board must safeguard the integrity of the years-long planning process that has produced not only the Clarksburg Town Center but also many other attractive developments in Montgomery County. It should not allow the planning and regulatory process to be abused to exact concessions on unrelated matters, and thereby hold innocent parties hostage.

The homes like the ones Craftstar and the others are building are places where people will raise their children and care for their family. A single parenthetical in a project plan, that never made its way to the Site Plan, and was never applied throughout the course of the review and issuance of the building permits and use and occupancy permits, should not be permitted to disrupt the ongoing development of the new Town.

12) Conclusion

For all of the above reasons, we urge the Planning Board to affirm the current interpretation and stay the course with the current reasonable and practical height interpretation, so that homeowners can live in peace, and so that the Clarksburg Town Center can continue to evolve into a Town. In addition, we ask the Planning Board to find that the CTCAC's claim is seven years late, that the CTCAC has no standing, and that the claim is without merit. Alternatively, the Planning Board should find that even if it were timely and even if the CTCAC has standing, the current interpretation is correct, the complaint does not establish a site plan violation and the complaint is without merit. Thank you for your thoughtful consideration.

Very truly yours,



Timothy Dugan

April 14, 2005

Page 9

SHULMAN
ROGERS
GANDAL
PORDY &
ECKER, PA.

cc: Hon. Michael Knapp
Ms. Rose Krasnow
Mr. Michael Ma
Ms. Wynn Witthans
Mr. John Carter
Ms. Sue Edwards
Ms. Nellie Maskal

g:\51\craftstar homes\clarksburg town center\correspondence government\derick berlage 04 14 05.doc

SHULMAN ROGERS GANDAL PORDY & ECKER, P.A.

Lawrence A. Shulman
Donald R. Rogers
Karl L. Ecker†
David A. Pordy*
David D. Freishtat
Martin P. Schaffer
Christopher C. Roberts
Jeffrey A. Shane
Edward M. Hanson, Jr.
David M. Kochanski
James M. Kefauver
Robert B. Canner
Daniel S. Krukower
Kevin P. Kennedy
Alan B. Sternstein
Nancy P. Regelin
Samuel M. Spirito*

Martin Levine
Worthington H. Tislot, Jr.*
Fred S. Sommer
Morton A. Faller
Alan S. Tilles
James M. Hoffman
Michael V. Nakamura
Jay M. Eisenberg*
Douglas K. Hirsch
Ross D. Cooper
Glenn C. Eckelson
Karl J. Proff, Jr.*
Timothy Dugan*
Kim Viti Fiorentino
Sean P. Sherman*
Gregory D. Grant*
Jacob S. Frankel*

Rebecca Oshway
Ashley Joel Gardner
Michael J. Froehlich
William C. Davis, III
Patrick M. Marlyn
Sandy David Baron
Christine M. Sorge
Michael L. Kabik
Jeffrey W. Rubin
Simon M. Nadler
Scott D. Musella
Karl W. Means
Debra S. Friedman*
Matthew M. Moore*
Daniel H. Handman
Eric J. von Vorys
Michelle R. Curtis*

Gary L. Horowitz
Cara A. Frye*
Heather L. Howard
Stephen A. Metz
Hong Suk "Paul" Chung
Lisa C. DeLessio*
Patrick J. Howley
Glenn W.D. Golding*
Carmen J. Morgan*
Kristin E. Draper*
Heather L. Spurnier*
Melissa G. Bernstein
Patricia Teck
Robert L. Ritzer*
Daniel H. Anixt
Jacob A. Ginsberg
Meryl A. Kessler*

John D. Sadler
Of Counsel
Larry N. Gandal
Leonard R. Goldstein
Richard P. Meyer*
William Robert King
Larry A. Gordon*
David E. Weisman
Lawrence Eisenberg
Deborah L. Moran
Mimi L. Magyar
Scott D. Field
Special Counsel
Philip R. Hochberg*

Maryland and D.C.

except as noted:

* Virginia also * D.C. only
* Maryland only † Retired

Writer's Direct Dial Number:

(301) 230-5228

tdugan@srgpe.com

April 20, 2005

Hand Delivered

Ms. Rose Krasnow

Chief

Development Review

The Maryland-National Capital Park and Planning Commission

8787 Georgia Avenue

Silver Spring, Maryland 20910

Re: Craftstar Homes
Clarksburg Town Center
Side Street Yard Setback Compliance

Dear Ms. Krasnow:

We represent Craftstar Homes ("Craftstar") one of the owners and builders of the Clarksburg Town Center. I urge you to exercise your authority to approve, "surgically," the minor site plan modifications necessary to approve the existing side street yard setbacks and thereby avoid unnecessary hardship, inconvenience and trouble for Craftstar's homeowners, pursuant to Section 59-D-3.7 and Section 59-D-2.6(a)(1) of the Zoning Ordinance.

Before the encroachments are authorized through the minor amendment, title may be impaired and questions may be raised regarding the marketability of title, if owners attempt to sell or refinance their properties. Time is of the essence.

I am simply asking that you "surgically" amend the relevant Site Plans for those homes listed below. Amending, again, "surgically," the ones in question is within your authority, and doing so would still preserve the fundamental approvals. I am not asking for a wholesale Site Plan revision. I am asking just to correct those existing buildings where the homeowners now occupy the property.

I ask that you note as "side street setback amended," on each of the Signature Sets, for each the properties listed below.

The amendments would not preclude the Planning Board's and the Staff's more comprehensive review and its crafting of other elements for its plan for compliance. It would simply reduce the homeowners' problems.

Time is of the essence. The owners could easily face severe difficulties if they were to lose a sale or to be refused financing. The homes are likely their most significant asset.

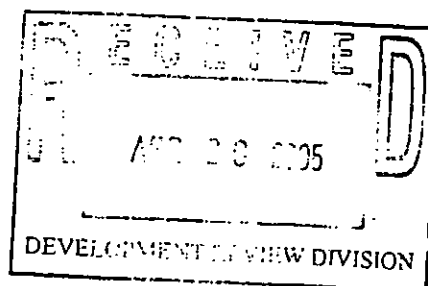
Accordingly, because no one could possibly be contemplating the destruction of the homes, the Site Plans must be amended. The Planning Staff taking such initiative could avoid great heartache and hardship for the homeowners.

If the Planning Staff were at all reluctant to take such action unilaterally, I recommend contacting the Director and/or the Planning Board Chairman to obtain their support to remedy what will be, undoubtedly, part of the overall solution. Doing so would maintain the financial *status quo* for many homeowners. Everyone acknowledges that the circumstances do not support an allegation that anyone intentionally disregarded the development notations. Therefore, it is possible that the Planning Board may establish other steps for a plan of compliance, pursuant to Section 59-D-3.6.

The County's planning process is not under siege, where no interim remedial steps would be appropriate before a Planning Board hearing. Rather, I am requesting immediate action to limit the "fallout" arising from the work conducted with the best of intentions.

As to all of the affected Craftstar homes, during the course of construction, Craftstar followed the civil engineer's directions as to where the buildings should be located, to be sure (among other things) that they would not extend beyond the setbacks. Only after the buildings were constructed did Craftstar learn of the setback issue. (The encroachments are not over the boundary line between two separate properties.)

All of the affected Craftstar homes have been sold to, and are now occupied by, homeowners. Please see the listing below.



The following list of side street yard setback encroachments includes the addresses, the legal descriptions, and the relevant Site Plan Signature Set Sheet to be noted as amended.

No.	Address	Lot/Block	Unit Type	Status	Side Street Setback Encroachment	Site Plan No.	Sheet
1.	12962 Clarksburg Square Rd.	53 A	TH	Occupied	Side yard 3'	8-02014	5/11
2.	12642 Piedmont Trail Road	37 D	TH	Occupied	Side yard 5'	8-98001B	3/5
3.	12800 Brightwell Drive	29 E	TH	Occupied	Side yard 5'	8-98001B	4/5
4.	12853 Murphy Grove Terrace	35 F	TH	Occupied	Side yard 4'	8-98001-1B3	2/3
5.	12825 Murphy Grove Terrace	47 F	TH	Occupied	Side yard 5'	8-98001-1B3	3/3
6.	13022-13040 Clarksburg Square Rd.	Units 1-10S Parcel B-S **	2/2's	Occupied	Side yard 3'	8-02014	7/11
7.	23646 Overlook Park Drive	11 AA	TH	Occupied	Side yard 5'	8-98001C	5/11
8.	23626 Public House Road	1 EE	TH	Occupied	Side yard 4'	8-98001C	4/11
9.	23622 Public House Road	11 EE	TH	Occupied	Side yard 4'	8-98001C	4/11
10.	23600 Public House Road	12 EE	TH	Occupied	Side yard 4'	8-98001C	4/11

** = Two over two condominium units.

1) The 10 feet Minimum Street Setback Requirement Appears to Exist Which Requires Immediate Action

Please see the reports. The 10 feet setback did appear in the Site Plan Signature Sets, and in the Site Plan Opinions. As you will recall, the Technical Staff deleted the height parenthetical proposal of 45 feet, as shown in the Signature Sets for Site Plan Nos. 8-98001A and 8-98001B. We are asking the Staff to take the same steps. Just as the Planning Staff exercised its authority to modify the Site Plan for the building height, we request that the Planning Staff to "surgically" amend the side street setback pursuant to the Staff's authority to make minor amendments to the Site Plan and Project Plan, as explained below, as soon as possible.

2) The RMX-2 Zone Has No Applicable Street Setback Requirement.

The Zoning Ordinance does not provide for any applicable minimum street side yard setback, because the Ordinance allows for no setback where having no setback is in accord with the Clarksburg Master Plan. Please see Section 59-C-10.3.8, "Minimum Building Setbacks" and Section 59-C-10.3.8, footnote 1, at pages C10-12-13. As has been noted in the Project Plan and Site Plans, the Planning Board already found that no minimum street setback is necessary according to the Clarksburg Master Plan. Therefore, the Zoning Code does not require a street setback from either the front or side street.

3) The Zoning Ordinance Authorizes the Planning Staff to Amend the Site Plan

a) Surgically Amending The 10 feet Side Street Setback Would Not Fundamentally Alter the Site Plan Approvals.

The term "fundamental" is used because it indicates the nature of the project elements that only the Planning Board can change.

Under Section 59-D-2.6(a)(1), "Minor Plan Amendment," it provides:

A minor amendment is an amendment or revision to a plan or any findings, conclusions, or conditions associated with the plan that does not entail matters that are fundamental determinations assigned to the Planning Board. A minor amendment is an amendment that does not alter the intent, objectives, or requirements expressed or imposed by the Planning Board in its review of the plan. A minor amendment may be approved, in writing, by the Planning Board staff. Such amendments are deemed to be administrative in nature and concern only matters that are not in conflict with the Board's prior action.

(Emphasis added.)

The side street setback should be amended "surgically" because to do so will not fundamentally alter the Project Plan or either Site Plan, for the following reasons.

First, expressly stated recommendations in the Master Plan necessarily would have to be respected as fundamental. The side street setback does not fall within such category. As noted elsewhere, the Planning Board's Site Plan Opinions expressly found that the Master Plan does not recommend any minimum street setback.

Second, the Clarksburg Town Center's physical look and feel is evidence that "surgically" approving the requested, limited, side street setback amendment would not fundamentally alter the Project Plan or Site Plan. The homes exist. They do not appear out of place.

Finally, the proposed "surgical" amendments would not affect the Historic District. The Master Plan provided a geographic buffer to preserve the Historic District. The Project Plan Opinion also provided for particular street setbacks pertaining to the Historic District, at page 5, Item 9, but not everywhere. The subject properties are a significant distance from the Historic District. As noted earlier, the Project Plan Opinion noted on the Data Sheet, at page 9, that the Master Plan did not require any street setbacks. Thus, it is not unreasonable to argue that "surgically" modifying the approved setbacks would not affect the Historic District.

b) The Zoning Ordinance Requires Strict Compliance with the Site Plan Which Mandates a Prompt Amendment

The Site Plan must be amended to reflect existing conditions in order to comply with the Site Plan. The current circumstances were not done intentionally. Nonetheless, the variances establish a title issue for the homeowners. They are facing difficulties that must be remedied expeditiously. Under Section 59-D-3.5, it provides, "No sediment control permit, building permit or use-and-occupancy permit may be issued unless it is *in strict compliance with an approved site plan.*"

The Planning Staff should exercise its authority to remedy the situation before the homeowners find themselves in untenable situations, because, as a remedy or as a component of any plan of compliance, surely no one is suggesting that the buildings be demolished. Thus, the Staff would not be acting outside of the Planning Board's expectations.

4) Little If Any Impact

As we noted in earlier correspondence, the homes, like the ones Craftstar and the others are building, are places where people will raise their children and care for their families. A Site Plan condition that appears to have been overlooked, in good faith,

with no malice intended, by both the private sector and public sector, should not be permitted to disrupt the ongoing development of the new Town. A Planning Staff amendment would resolve such matter with no harm to anyone, and with *minor* impact. The circumstances are precisely the ones that authorize the Planning Staff to act.

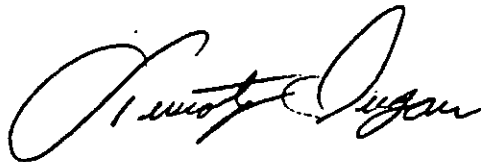
5) Conclusion

For all of the above reasons, I urge you to alleviate the potential hardship that, with the passage of more time, will happen.

I ask that you note as "side street setback amended," on each of the Signature Sets listed above, for each the above-referenced properties.

Thank you for your thoughtful consideration.

Very truly yours,



Timothy Dugan

cc: Mr. Michael Ma
Ms. Wynn Witthans
Mr. John Carter
Ms. Sue Edwards
Ms. Nellie Maskal
Todd D. Brown, Esq.
Barbara A. Sears, Esq.

SHULMAN ROGERS GANDAL PORDY & ECKER, P.A.

Lawrence A. Shulman
Donald R. Rogers
Karl L. Becker
David A. Pordy
David D. Freidstat
Martin P. Schaffer
Christopher C. Roberts
Jeffrey A. Shios
Edward M. Hanson, Jr.
David M. Kachanski
James M. Katsover
Robert B. Cantor
Daniel S. Krakower
Kevin P. Kennedy
Alan B. Sternstein
Nancy P. Regelin
Samuel M. Spitzer

Martin Levine
Washington H. Talbot, Jr.
Fred S. Sommer
Morton A. Paller
Alan S. Tiller
James M. Hoffman
Michael V. Nakanishi
Jay M. Eisenberg
Douglas K. Hirsch
Rose D. Cooper
Glenn C. Stetson
Karl J. Freid, Jr.
Timothy Dugas
Kim Vid Flamentino
Sean P. Shorman
Gregory D. Grant
Jacob S. Frankel

Rebecca Othoway
Ashley Joel Gaudin
Michael J. Froehlich
William C. Davis, III
Patrick M. Martin
Sandy David Baron
Christine M. Forge
Michael L. Kabik
Jeffrey W. Rubin
Simone M. Nadler
Scott D. Muelken
Karl W. Meana
Debra S. Friedman
Matthew M. Moore
Daniel H. Handman
Eric J. von Voss
Michelle R. Corbin

Gary I. Horowitz
Cari A. Frye
Heather L. Howard
Stephen A. Menn
Hong Suk "Paul" Chung
Lisa C. DeLazio
Patrick J. Howley
Glenn W.D. Golding
Carmen J. Morgan
Kristin E. Draper
Heather L. Spurrer
Melissa G. Bernstein
Pauline Todd
Robert L. Riner
Daniel H. Aaker
Jacob A. Ginsberg
Meryl A. Kessler

John D. Saffer
Of Counsel
Larry N. Gandel
Leonard R. Goldstein
Richard P. Meyer
William Robert Klag
Larry A. Gordon
David E. Weisman
Lawrence Eisenberg
Deborah L. Moran
Miri L. Magyer
Scott D. Field
Special Counsel
Philip R. Hochberg
Maryland and D.C.
except as noted
• Virginia also
• Maryland only • D.C. only
• Redford

Writer's Direct Dial Number:
(301) 230-5219
kkennedy@srgpc.com

May 23, 2005

Ms. Amy L. Presley
23506 Sugar View Drive
Clarksburg, Maryland 20871-4313

Re: Craftstar Homes, Inc.'s Proposed Minor Site Plan Amendment
For the Benefit of Craftstar Customers at Clarksburg Town Center

Dear Ms. Presley:

This law firm and we are counsel to Craftstar Homes, Inc. and its LLC affiliates (together, "Craftstar") building and selling fee simple townhouses ("SFA") and 2-over-2 townhouse condominiums ("2-over-2s") at the Clarksburg Town Center project (the "Project"). We are writing you, as the spokesperson for the CTCAC, to elicit the CTCAC's support for a petition for a minor site plan amendment we are preparing to file for Craftstar with the Montgomery County Planning Board at Park and Planning ("P&P" or the "Board").¹

Our petition, which we are assembling, will seek the Board's confirmatory approval (either through staff or from the entire Board, whichever the Board decides is appropriate) of various as-built SFA and 2-over-2 units which have either (i) been sold and conveyed to Craftstar customers or (ii) are under construction and under contract of sale to Craftstar customers. The proposed minor amendment would act to remove any possible cloud on those transactions (for the benefit of Craftstar's customers), both in regard to any alleged violation of approved site plan building restriction lines ("BRLs") and concerning any alleged violation of the disputed maximum height limitations that your folks have claimed apply to these Craftstar units, whether built and sold or under

¹ Because we have been unable to obtain the address for your counsel, who we understand is David Fischer, Esq., we would appreciate your forwarding this letter to him at your earliest convenience. Thank you.

SHULMAN
ROGERS
GANDAL
PORDY &
ECKER, P.A.

Ms. Amy L. Presley
May 23, 2005
Page 2

construction and subject to outsale contracts with Craftstar customers. The subject units fall into the following four (4) categories:

- (i) settled and conveyed SFAs;
- (ii) settled and conveyed 2-over-2s;
- (iii) under contract and lawfully permitted SFAs (in various stages of construction); and
- (iv) under contract and lawfully permitted 2-over-2s (in various stages of construction).

In those categories, if the applicable signature set site plan BRLs which appear on the narrative table of BRLs (the "Disputed Tables"), that are affixed to the earliest versions of the signature sets (*i.e.*, that are the subject of dispute before the Board), are ultimately validated to be the controlling BRLs, then the settled units could be determined in violation of those to-be-determined BRLs.

Since the discrepancy was brought to its attention, Craftstar has instructed its outside engineering firm (CPJ) to only site Craftstar products within all BRLs shown on the Disputed Tables and to err, if at all, only on the side of iron-clad compliance with same, unless and until finally addressed by the Board. While that had always been Craftstar's expectation (without the need for further admonition), the status quo nonetheless compels Craftstar to seek this resolution as to the forgoing units which (if the CTCAC is correct) may be in violation. Hence, we respectfully seek this amicable resolution for the benefit of those potentially impacted/settled homeowners.

The other issue that our proposed minor site plan amendment will seek to cure concerns the alleged site plan violations in regard to the so-called "maximum height issue." In that regard, Craftstar's concern again involves its SFA and 2-over-2 units, and the potentially impacted units fall into all four (4) of the foregoing categories; *i.e.*, both built and settled units and units under construction and subject to still pending contracts of sale with Craftstar customers. Of course, the maximum height issue concerns the ongoing debate as to whether the maximum "story" limitations (3-stories for SFA and 4-stories for the 2-over-2s): (i) are subject to the Disputed Tables (which is the CTCAC's position) or (ii) supersede the numerical caps in the Disputed Tables (which is the permittee's position), which numerical caps appear on some, but not all of the signature sets. If the CTCAC position is ultimately validated by the Board, then even the CTCAC has stated (*e.g.* at the April 14, 2005 Board hearing) that only structures which are not already built and sold (and excluding those which are under construction and subject to valid outsale contracts with builder customers) should be potentially impacted. Hopefully, the CTCAC feels the same way about settled customers in built homes that arguably encroach over the BRLs that were also shown on those Disputed Tables.

Achieving that (agreed to be equitable) result in regard to both of these issues (height and BRLs), for the benefit of Craftstar's customers, is the principal, and indeed only purpose of this request for CTCAC support.

Whether Craftstar or any permittee(s) should be sanctioned for any violations that may be determined to already exist as to these sold or under contract units (*i.e.*, which the Board may ultimately find in regard to the height and/or BRL issues) can and (we think) should be bifurcated for a separate discussion and determination downstream. Obviously, Craftstar will not begin another building that even arguably violates the BRLs and/or maximum height (if any) in the Disputed Tables unless and until the Board finally decides these issues, whether on reconsideration (as to height) or otherwise. However, for: (A) already built and sold units that potentially violate the BRLs and/or height specifications (*i.e.* 2-over-2s or SFAs that exceed the alleged numerical cap limit under the zoning ordinance measuring methods) in the Disputed Tables; and (B) units that are under construction and also subject to outsale contracts with Craftstar customers which are involved with the said "maximum height" site plan compliance issue, we need a solution that frees those innocent customers from any potential cloud on their settled and/or pending transactions. As we understand the CTCAC's position, we think (and hope) the parties can agree on that -- for the benefit of Craftstar's settled and under-contract customers.

With the above having been said, our request assumes (without field verification) that all Craftstar 2-over-2s built and sold and/or under construction now and subject to outsale customer contracts awaiting settlement exceed the numerical cap, as measured from the ground alongside those units. Whether that is also true when measured under the zoning ordinance method is unclear, given the differences in house grade elevation. Those same assumptions are being made in regard to any numerical cap restriction in the Disputed Tables that may apply to Craftstar's built and settled and under contract/construction SFA 3-story products; again, some of that may turn on the point from which the measurement is taken. As for Craftstar's 2.5 story SFA product, that assumption is probably less reliable because of their shorter stature (2 stories, over an English basement), although some may still exceed the numerical cap, as built, depending on the topography and the point from which the measurement is taken.

Further, our request assumes (without field verification) that some of Craftstar's 2-over-2 buildings and SFAs encroach upon the BRLs set forth in the Disputed Tables.

The present circumstances are having serious repercussions for Craftstar's purchasers. Without conceding the disputed height issue, please understand that Craftstar, although not required to do so under its contract, is reluctantly contemplating the cancellation of the outsale contracts (and the return of contract deposits) for 16 of its pipeline outsale contract purchasers, each of whom had contracted to purchase

SHULMAN
ROGERS
GANDAL
PORDY &
ECKER, P.A.

Ms. Amy L. Presley
May 23, 2005
Page 4

condominium units in the next 2-over-2 building. Craftstar does not wish to do so. Craftstar had hoped to build on a lot already purchased from Newland for that purpose. Also, Craftstar is contemplating either postponing construction of that structure and any other as-planned 2-over-2 and/or SFA structure, which might exceed the alleged maximum height restrictions in the Disputed Tables, until either this ongoing issue is resolved or Craftstar may be forced to redesign its 2-over-2 and SFA products to comport with those alleged height restrictions or any other decision the Board may deliver in regard to these unresolved issues. Obviously, Craftstar would not be happy to suffer these extremely damaging consequences.

What Craftstar still needs your help on is its settled and under construction (pending settlement with Craftstar customers) 2-over-2s and SFA units that arguably violate either the BRLs and/or the alleged numerical cap height restrictions in the Disputed Tables. The spectre of a potential violation hangs over those units and unfairly impacts the completely innocent Craftstar customers who either own or have contracted to purchase those as-built units.

As reasons therefor, please consider: (i) that Craftstar's customers, both settled and pending settlement, are completely innocent in all of this, (ii) that Craftstar reasonably expected its outside engineer to site its houses within all arguably applicable BRLs and played no role in that, except to pay and rely upon its engineers to perform that engineering work correctly, (iii) that Craftstar relied on its lot seller/developer, Newland, to obtain site plan approvals compatible with the Craftstar house-types (that Newland knew Craftstar was planning to build and sell on the lots Craftstar purchased from Newland) and believed its seller/developer's proffers to Craftstar in that regard, including the developer's specific approvals of Craftstar's house types pursuant to Craftstar's lot purchase agreements, (iv) that Craftstar received County wall-check approvals of all of its under construction units during construction without any suggestion by the DPS inspectors that any BRLs had ever been violated; and (v) that Craftstar submitted its architectural plans showing the heights of its 2-over-2 and SFA products to DPS, which approved them, sought and obtained P&P's approval as to zoning compliance (including compliance with the referenced Site Plans), and was given permits by DPS to build all of the subject units and settle them (as applicable), including issuance of final inspection approvals or U&O permits before each outsale settlement to a now potentially impacted Craftstar customer.

For all of the above reasons, Craftstar respectfully requests your consent to represent to staff (and the Board, if necessary) that the CTCAC does not contest, and indeed supports Craftstar's request for this minor site plan amendment to: (i) re-draw the applicable BRLs in regard to the units listed above (and believed to be in possible violation of BRLs in the Disputed Tables), but only to trace the as-built footprint of those constructed units so as to remove any potential BRL violation potentially impacting those

settled Craftstar customers; and (ii) to relax any alleged numerical cap/maximum height restrictions in the Disputed Tables and which may be determined by the Board to apply to Craftstar's 4-story 2-over-2s and 3 (and/or 2.5) story SFA units that are either:

(A) already built and settled pursuant to previously granted use and occupancy and/or final inspections, and/or (B) currently under construction pursuant to a DPS building permit and subject to outsale contracts with Craftstar customers -- so that those ongoing improvements can proceed to completion, lawful occupancy and settlement without the spectre of any potential site plan violation(s) adversely impacting those Craftstar customers.

To indicate CTCAC's consent to the foregoing, please sign where indicated below and Craftstar will move forward accordingly. As I say, by joining your qualified support to Craftstar's Minor Amendment application, the CTCAC will reserve its full range of other positions, both already articulated and otherwise, including (A) insisting that Craftstar and/or others be made to suffer some form of sanction(s) for any such alleged/prior violations (should that be the Board's ruling), Craftstar's minor site plan amendment notwithstanding, and (B) holding firm to the CTCAC's position that all BRLs and maximum height restrictions (if any) in the Disputed Tables be complied with by all permittees with respect to any units to be built in the future. On those points, the parties would simply agree to disagree and look to the Board for resolution on the merits.

Many thanks for your anticipated cooperation and courtesy in lending your support to this effort for the benefit of Craftstar's potentially impacted customers. Should you or any of your colleagues, and certainly, your counsel, have any questions regarding this request, please contact either or each of us without delay.

Yours very truly and respectfully,

SHULMAN, ROGERS, GANDAL,
PORDY & ECKER, P.A.

By: Kevin P. Kennedy (TD)
Kevin P. Kennedy

By: Timothy Dugan
Timothy Dugan

Co-counsel for Craftstar Homes, Inc.
and its LLC affiliates

We hereby express our support for the proposed Minor Site Plan Amendment described in this letter for the benefit of Craftstar's settled and contract purchaser customers, with full reservation of rights as described above.

Clarksburg Town Center Advisory Committee

By: _____
Amy L. Presley, Spokesperson

Date: _____

cc: Craftstar Homes, Inc.
Ms. Rose Krasnow, Chief of Development Review (via fax/301-495-4595)
Michele M. Rosenfeld, Esq., Tariq A. El-Baba, Esq. (via fax/301-495-2173)

KPK/ts

g:\Houffar\Barnes\Clarksburg\www.craftstar.com\response\amy l. presley 05 23 05.tif

SHULMAN ROGERS GANDAL PORDY & ECKER, P.A.

Lawrence A. Shulman
Donald R. Rogers
Karl L. Ecker†
David A. Pordy*
David D. Freidstat
Martin P. Schaffer
Christopher C. Roberts
Jeffrey A. Shane
Edward M. Hanson, Jr.
David M. Kochanski
James M. Kefauver
Robert B. Canter
Daniel S. Krakower
Kevin P. Kennedy
Alan B. Sternstein
Nancy P. Regelin
Samuel M. Spirito*

Martin Levine
Worthington H. Talcott, Jr.*
Fred S. Sommer
Morton A. Feller
Alan S. Tilles
James M. Hoffman
Michael V. Nakamura
Jay M. Eisenberg*
Douglas K. Hirsch
Rosa D. Cooper
Glenn C. Etelson
Karl J. Proff, Jr.*
Timothy Dugan*
Kim Vid Fiorentino
Sean P. Sherman*
Gregory D. Grant*
Jacob S. Frankel*

Rebecca Oshway
Ashley Joel Gardner
Michael J. Froehlich
William C. Davis, III
Patrick M. Martyn
Sandy David Baron
Christine M. Sorge
Michael L. Kabik
Jeffrey W. Rubin
Simon M. Nadler
Scott D. Muscles
Karl W. Means
Debra S. Friedman*
Matthew M. Moore*
Daniel H. Handman
Eric J. von Vorys
Michelle R. Curtis*

Gary I. Horowitz
Cara A. Frye*
Heather L. Howard
Stephen A. Metz
Hong Suk "Paul" Chung
Lisa C. DeLessio*
Patrick J. Howley
Glenn W.D. Golding*
Carmen J. Morgan*
Kristin E. Draper*
Heather L. Spurner*
Melissa G. Bernstein
Patricia Teck
Robert L. Ritter*
Daniel H. Anixt
Jacob A. Ginsberg
Meryl A. Kessler*

John D. Sadler
Of Counsel
Larry N. Gandal
Leonard B. Goldstein
Richard P. Meyer*
William Robert King
Larry A. Gordon*
David E. Weisman
Lawrence Eisenberg
Deborah L. Moran
Mimi L. Magyar
Scott D. Field
Special Counsel
Philip R. Hochberg*
*Maryland and D.C.
except as noted:*
* Virginia also * D.C. only
* Maryland only † Retired

Writer's Direct Dial Number:

(301) 230-5228

tdugan@srgpe.com

May 31, 2005

Hand Delivered

The Honorable Derick Berlage
Chair, The Montgomery County Planning Board
The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Craftstar Homes, Inc.
Clarksburg Town Center
Site Plan Nos.: 8-98001 and 8-02014 (the "Site Plans")
Project Plan No. 9-94004 (the "Project Plan")
Building Height Compliance
Craftstar Homes, Inc.'s Proposed Site Plan/Project Plan Amendment
For the Benefit of Craftstar Customers at Clarksburg Town Center

Dear Chairman Berlage and the Other Members of the Planning Board:

This law firm and we are counsel to Craftstar Homes, Inc. and its LLC affiliates (together, "Craftstar") building and selling fee simple townhouses ("SFA") and 2-over-2 townhouse condominiums ("2-over-2s") at the Clarksburg Town Center project (the "Project").

We have been working diligently with the Planning Staff, the DPS Staff, and others to address the height issue and we appreciate everyone's contributions.¹ Still, Craftstar is very concerned about the impact that the height issue is having on its customers. They have asked us to alert the Planning Board about their customers' plight, and to request a hearing. As explained below, we are asking the Planning Board to resolve their customers' dilemma, but to do so without limiting the Planning Board's

¹ We have also been working regarding the alleged setback issues, which we will address in a subsequent submission.

authority or possible subsequent actions regarding the height issue, such as investigations and plans of compliance.

Surely, Craftstar's customers have no culpability. They ought to be allowed to move on with their lives. We do not believe that Craftstar is culpable with respect to any of the issues, either. Nonetheless, for the sake of its customers, Craftstar will leave for another day addressing any subsequent proceedings that may involve Craftstar. Consequently, we submit this letter and respectfully make our recommendations for the benefit of Craftstar's customers only.

Accordingly, we respectfully request a hearing. We further respectfully recommend that the Planning Board bifurcate the resolution of the height matter so that the Planning Board may:

- expeditiously reassure Craftstar's innocent customers that their homes will not have to be altered; and
- through a separate proceeding, conduct whatever investigation and determine whatever possible resulting plan of compliance the Board deems appropriate to completely resolve the height matter.

More particularly, our petition on behalf of Craftstar's customers is that the Planning Board approve, pursuant to its authority,² (either through staff and/or from the entire Board, whichever the Board decides is appropriate) the heights of the various as-built SFA and 2-over-2 units which have either: (i) been sold and conveyed to Craftstar customers, or (ii) are under construction and under a contract of sale to Craftstar customers ("outsale contract"). Our proposed amendment would act to remove any possible cloud on those transactions (for the benefit of Craftstar's customers) concerning any alleged violation of the disputed maximum height limitations that may ultimately be determined to exist, whether built and sold or under construction and subject to outsale contracts with Craftstar customers. The subject units fall into the following four (4) categories:

- (i) settled and conveyed SFAs;
- (ii) settled and conveyed 2-over-2s;

² The Planning Board derives its authority from: (1) Section 59-D-3.6 of the Montgomery County Zoning Ordinance, which allows the Planning Board to consider a site plan violation on its own motion and effect a plan of compliance; (2) Section 59-D-3.7 and Section 59-D-2.6(b)(1), whereby the Planning Board may amend the Site Plans and the Project Plan; and (3) Section 59-D-2.9 and Chapter 50, Section 50-6 of the Subdivision Regulations, which authorizes the Planning Board to enforce the Project Plan conditions of approval. We further note that although an initial project plan application may require a minimum notice period, the statute does not provide one for an amendment; therefore, we respectfully suggest that the Planning Board may conduct proceedings to amend both the Site Plans and the Project Plan without providing a minimum of 60 days notice. *Please see* Section 59-D-2.2.

- (iii) under contract and lawfully permitted SFAs (in various stages of construction); and
- (iv) under contract and lawfully permitted 2-over-2s (in various stages of construction).

Enclosed as Exhibit 1 is the list of the above-described Craftstar units.

As noted, it is possible that the above units could be found to be in violation of numerical height limitations, even though they comply with the 3-story and 4-story maximum height limitations. We recognize that the maximum height issue concerns the ongoing debate as to whether the maximum "story" limitations (3-stories for SFA and 4-stories for the 2-over-2s): (i) are subject to the numerical height limitations found on some, but not all, of the narrative tables affixed to the site plan signature sets (the "Disputed Tables"), or (ii) supersede such numerical caps.

Even if the numerical caps were found to govern the 3-story and the 4-story limitations for future permitting, we believe that others share our view that our recommendation of approving the existing homes and those under construction is a fair one. Even the Clarksburg Town Center Advisory Committee (the "CTCAC") has already stated (e.g. at the April 14, 2005 Planning Board hearing) that only structures which are not already built and sold, potentially, should be the only ones governed by a numerical cap limitation (and such structures would not include those which are already under construction and subject to valid outsale contracts with builder customers).

We are trying to achieve, at the earliest opportunity, the fair result that we believe is generally agreed upon, and thereby eliminate the concern of potentially "decapitating" such homes, again, for the benefit of Craftstar's customers. It is the principal, and indeed only purpose of this request.

Clearly, Craftstar will not begin another building that even arguably violates the maximum numerical cap height limitation (if any) in the Disputed Tables unless and until the Board finally decides the issues, whether on reconsideration as to height or otherwise. However, for: (A) already built and sold units that potentially violate the height specifications (i.e. 2-over-2s or SFAs that exceed the alleged numerical cap limit under the zoning ordinance measuring methods) in the Disputed Tables; and (B) those units that are under construction and also subject to outsale contracts with Craftstar customers which are involved with the said "maximum height" site plan compliance issue, we desperately need a solution that frees those innocent customers from any potential cloud on their settled and/or pending transactions. Again, we request for the benefit of Craftstar's settled and under-contract customers.

While it had always been, and continues to be, Craftstar's expectations that its homes are in compliance with the Site Plan and Project Plan development approvals,

(without the need for further admonition), the status quo nonetheless compels Craftstar to seek the recommended resolution for the forgoing units which, *arguendo*, might be in violation. Hence, we respectfully seek the resolution for the benefit of those potentially impacted/settled homeowners. We respectfully reiterate that the issue whether Craftstar or any permittee(s) should be sanctioned for any violations that may be determined to already exist as to sold or under contract units (*i.e.*, which the Planning Board may ultimately find in regard to the height issue) can and (we think) should be for a separate investigation and determination downstream.

With the above having been said, our request assumes (without field verification) that all Craftstar 2-over-2s that are built and sold and/or under construction now and subject to outsale customer contracts awaiting settlement exceed the numerical cap, as measured from the ground alongside those units. Whether that is also true when measured under the zoning ordinance method is unclear, given the differences in house grade elevation. Those same assumptions are being made in regard to any numerical cap restriction in the Disputed Tables that may apply to Craftstar's built and settled and under contract/construction SFA 3-story products; again, its determination may turn on the point from which the measurement is taken. As for Craftstar's 2.5 story SFA product, that assumption is probably less reliable because of their shorter stature (2 stories, over an English basement), although some may still exceed the numerical cap, as built, depending on the topography and the point from which the measurement is taken.

As further reasons supporting the Planning Board amending the Site Plans and the Project Plan expeditiously for Craftstar's innocent customers, please consider: (i) that Craftstar's customers, both settled and pending settlement, are completely innocent in all of this; (ii) that Craftstar relied on its lot seller/developer, Newland, to obtain site plan approvals compatible with the Craftstar house-types (that Newland knew Craftstar was planning to build and sell on the lots Craftstar purchased from Newland); (iii) that Craftstar believed its seller/developer's proffers to Craftstar in that regard, including the developer's specific approvals of Craftstar's house types pursuant to Craftstar's lot purchase agreements; (iv) that Craftstar received County approvals of all of its under construction units during construction without any suggestion by the DPS inspectors that any development standards had ever been violated; and (v) that Craftstar submitted its architectural plans showing the heights of its 2-over-2 and SFA products to DPS, which approved them, sought and obtained Park and Planning's approval as to zoning compliance (including compliance with the referenced Site Plans), and was issued permits by DPS to build all of the subject units and settle them (as applicable), including issuance of final inspection approvals or U&O permits before each outsale settlement to a now potentially impacted Craftstar customer.

For all of the above reasons, Craftstar respectfully requests that the Planning Board amend the Site Plans and Project Plan, as necessary, to relax any alleged numerical

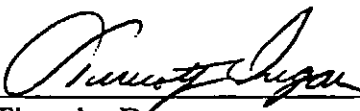
cap/maximum height restrictions in the Disputed Tables which may be determined by the Board to apply to Craftstar's 4-story 2-over-2s and 3 (and/or 2.5) story SFA units that are either: (A) already built and settled pursuant to previously granted use and occupancy and/or final inspections, and/or (B) currently under construction pursuant to a DPS building permit and subject to outsale contracts with Craftstar customers -- so that those ongoing improvements can proceed to completion, lawful occupancy and settlement without the spectre of any potential site plan violation(s) adversely impacting those Craftstar customers.


We reiterate that we are not requesting that Craftstar be excused from any subsequent proceedings wherein the Planning Board may investigate and consider whether any Site Plan and/or Project Plan violations occurred, including (A) determining whether Craftstar and/or others be made to suffer some form of sanction(s) for any such alleged/prior violations (should that be the Board's ruling), notwithstanding Craftstar's recommended Site Plan and Project Plan amendment for its customers; and (B) deciding that all maximum numerical height restrictions (if any) in the Disputed Tables be complied with by all permittees with respect to any units to be built in the future. We would anticipate such issues would be addressed at a later time in a proceeding for their resolution on the merits, and we would participate fully.

Thank you for your thoughtful consideration. Again, as we asked at the beginning of this letter, we respectfully request that the Planning Board schedule a hearing to consider our request at its earliest convenience.

Yours very truly and respectfully,

SHULMAN, ROGERS, GANDAL,
PORTY & ECKER, P.A.

By: 
Timothy Dugan

By:  (T.D.)
Kevin P. Kennedy
Co-counsel for Craftstar Homes, Inc.
and its LLC affiliates

Enclosure

May 31, 2005

Page 6

cc: Hon. Michael Knapp
Ms. Rose Krasnow
Mr. Michael Ma
Michele M. Rosenfeld, Esq.
Tariq A. El-Baba, Esq.
David Brown, Esq.
Todd D. Brown, Esq.
Barbara A. Sears, Esq.
Craftstar Homes, Inc.

g:\1\craftstar homes\clerk\berg towa csmr\correspondence\gov\shulman\derick berlage hight 05 31 05.rtf

Exhibit 1
 Craftstar Homes, Inc.
 Clarksburg Town Center
 Settled Units and Those Units Under Construction and Under Contract with Craftstar Customers
 May 31, 2005

1	A	B	C	D	E	F	G	H	I	J	
2	Record Plat	Block on Signature	Previous Lot and Block on Signature				Applicable Site Plan				
3	LOT	BLOCK	Set (if applicable)		ADDRESS	Housetype	Site Plan	Sheet No.	Date	Unit Settled	Unit Under Constr & Under Contract
5	24	A			12818 Clarks Crossing Drive	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
6	25	A			12818 Clarks Crossing Drive	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
7	26	A			12820 Clarks Crossing Drive	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
8	27	A			12822 Clarks Crossing Drive	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
9	28	A			12824 Clarks Crossing Drive	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
10	29	A			12826 Clarks Crossing Drive	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
11	30	A			23801 Branchbrier Way	Annapolis II	Phase 2 8-02014	5 of 11	10/14/2004	X	
12	31	A			23803 Branchbrier Way	Annapolis	Phase 2 8-02014	5 of 11	10/14/2004	X	
13	32	A			23805 Branchbrier Way	Annapolis	Phase 2 8-02014	5 of 11	10/14/2004	X	
14	33	A			23807 Branchbrier Way	Annapolis	Phase 2 8-02014	5 of 11	10/14/2004	X	
15	34	A			23809 Branchbrier Way	Annapolis	Phase 2 8-02014	5 of 11	10/14/2004	X	
16	35	A			23811 Branchbrier Way	Annapolis	Phase 2 8-02014	5 of 11	10/14/2004	X	
17	44	A			12944 Clarksburg Square Road	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
18	45	A			12948 Clarksburg Square Road	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
19	46	A			12948 Clarksburg Square Road	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
20	47	A			12950 Clarksburg Square Road	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
21	48	A			12952 Clarksburg Square Road	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
22	49	A			12954 Clarksburg Square Road	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
23	50	A			12956 Clarksburg Square Road	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
24	51	A			12958 Clarksburg Square Road	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
25	52	A			12960 Clarksburg Square Road	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
26	53	A			12962 Clarksburg Square Road	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
27	82	A	Parcel I	A	12900 Clarksburg Square Road	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
28	83	A	Parcel I	A	12902 Clarksburg Square Road	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
29	84	A	Parcel I	A	12904 Clarksburg Square Road	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
30	85	A	Parcel I	A	12906 Clarksburg Square Road	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
31	86	A	Parcel I	A	12908 Clarksburg Square Road	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
32	87	A	Parcel I	A	12910 Clarksburg Square Road	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
33	88	A	Parcel I	A	12912 Clarksburg Square Road	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
34	89	A	Parcel I	A	12914 Clarksburg Square Road	McLean	Phase 2 8-02014	5 of 11	10/14/2004	X	
35	Parcel M A (90)	Parcel H	A		12918 Clarksburg Square Road	Oney (2/2 MPDU)	Phase 2 8-02014	5 of 11	10/14/2004	X	
36	Parcel M A (91)	Parcel H	A		12918 Clarksburg Square Road	Fairfax (2/2 MPDU)	Phase 2 8-02014	5 of 11	10/14/2004	X	
37	Parcel M A (92)	Parcel H	A		12920 Clarksburg Square Road	Oney (2/2 MPDU)	Phase 2 8-02014	5 of 11	10/14/2004	X	
38	Parcel M A (93)	Parcel H	A		12922 Clarksburg Square Road	Fairfax (2/2 MPDU)	Phase 2 8-02014	5 of 11	10/14/2004	X	
39	Parcel M A (94)	Parcel H	A		12924 Clarksburg Square Road	Oney (2/2 MPDU)	Phase 2 8-02014	5 of 11	10/14/2004	X	
40	Parcel M A (95)	Parcel H	A		12926 Clarksburg Square Road	Fairfax (2/2 MPDU)	Phase 2 8-02014	5 of 11	10/14/2004	X	
41											
42	32	D			12652 Piedmont Trail Road	Annapolis	Phase 1B-2 8-98001B	3 of 5	8/3/2001	X	
43	33	D			12650 Piedmont Trail Road	Annapolis	Phase 1B-2 8-98001B	3 of 5	8/3/2001	X	
44	34	D			12648 Piedmont Trail Road	Annapolis	Phase 1B-2 8-98001B	3 of 5	8/3/2001	X	
45	35	D			12646 Piedmont Trail Road	Annapolis	Phase 1B-2 8-98001B	3 of 5	8/3/2001	X	
46	36	D			12644 Piedmont Trail Road	Annapolis	Phase 1B-2 8-98001B	3 of 5	8/3/2001	X	
47	37	D			12642 Piedmont Trail Road	Annapolis II	Phase 1B-2 8-98001B	3 of 5	8/3/2001	X	
48											
49	1	E			12801 Moneyworth Way	Clarksburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
50	2	E			12803 Moneyworth Way	Middleburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
51	3	E			12805 Moneyworth Way	Clarksburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
52	4	E			12807 Moneyworth Way	Clarksburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
53	5	E			12809 Moneyworth Way	Middleburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
54	6	E			12811 Moneyworth Way	Clarksburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
55	7	E			12815 Moneyworth Way	Clarksburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
56	8	E			12817 Moneyworth Way	Middleburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
57	9	E			12819 Moneyworth Way	Clarksburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
58	10	E			12821 Moneyworth Way	Middleburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
59	11	E			12823 Moneyworth Way	Clarksburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
60	12	E			12814 Murphy Grove Terrace	Middleburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
61	13	E			12812 Murphy Grove Terrace	Clarksburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
62	14	E			12810 Murphy Grove Terrace	Middleburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
63	15	E			12808 Murphy Grove Terrace	Clarksburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
64	16	E			12806 Murphy Grove Terrace	Middleburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
65	17	E			12804 Murphy Grove Terrace	Clarksburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
66	18	E			12802 Murphy Grove Terrace	Middleburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
67	19	E			12800 Murphy Grove Terrace	Clarksburg	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
68	25	E			12808 Brightwell Drive	McLean	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
69	26	E			12806 Brightwell Drive	McLean	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
70	27	E			12804 Brightwell Drive	McLean	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
71	28	E			12802 Brightwell Drive	McLean	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
72	29	E			12800 Brightwell Drive	McLean	Phase 1B-2 8-98001B	4 of 5	8/3/2001	X	
73											
74	1	F			12825 Clarks Crossing Drive	Annapolis II	Phase 1B-3 8-98001C	3 of 3	12/17/2001	X	
75	2	F			12823 Clarks Crossing Drive	Annapolis II	Phase 1B-3 8-98001C	3 of 3	12/17/2001	X	
76	3	F			12821 Clarks Crossing Drive	Annapolis	Phase 1B-3 8-98001C	3 of 3	12/17/2001	X	
77	4	F			12819 Clarks Crossing Drive	Annapolis II	Phase 1B-3 8-98001C	3 of 3	12/17/2001	X	
78	5	F			12817 Clarks Crossing Drive	Annapolis	Phase 1B-3 8-98001C	3 of 3	12/17/2001	X	
79	6	F			12815 Clarks Crossing Drive	Annapolis	Phase 1B-3 8-98001C	3 of 3	12/17/2001	X	

Exhibit 1
Craftstar Homes, Inc.
Clarksburg Town Center
Settled Units and Those Units Under Construction and Under Contract with Craftstar Customers
May 31, 2005

	A	B	C	D	E	F	G	H	I	J	K
1			Previous Lot and				Applicable Site Plan				
2	Record Plat		Block on Signature				Signature Set				Unit Under Constr & Under Contract
3	LOT	BLOCK	Set (if applicable)		ADDRESS	Housetype	Site Plan	Sheet No.	Date	Unit Settled	
80	7	F			12813 Clarks Crossing Drive	Annapolis	Phase 1B-3 8-98001C	3 of 3	12/17/2001	X	
81	29	F			12841 Murphy Grove Terrace	Annapolis	Phase 1B-3 8-98001C	3 of 3	12/17/2001	X	
82	30	F			12843 Murphy Grove Terrace	Annapolis	Phase 1B-3 8-98001C	3 of 3	12/17/2001	X	
83	31	F			12845 Murphy Grove Terrace	Annapolis II	Phase 1B-3 8-98001C	3 of 3	12/17/2001	X	
84	32	F			12847 Murphy Grove Terrace	Annapolis	Phase 1B-3 8-98001C	3 of 3	12/17/2001	X	
85	33	F			12849 Murphy Grove Terrace	Annapolis	Phase 1B-3 8-98001C	3 of 3	12/17/2001	X	
86	34	F			12851 Murphy Grove Terrace	Annapolis II	Phase 1B-3 8-98001C	3 of 3	12/17/2001	X	
87	35	F			12853 Murphy Grove Terrace	Annapolis	Phase 1B-3 8-98001C	3 of 3	12/17/2001	X	
88	42	F			12815 Murphy Grove Terrace	McLean	Phase 1B-3 8-98001C	2 of 3	12/17/2001	X	
89	43	F			12817 Murphy Grove Terrace	McLean	Phase 1B-3 8-98001C	2 of 3	12/17/2001	X	
90	44	F			12819 Murphy Grove Terrace	McLean	Phase 1B-3 8-98001C	2 of 3	12/17/2001	X	
91	45	F			12821 Murphy Grove Terrace	McLean	Phase 1B-3 8-98001C	2 of 3	12/17/2001	X	
92	46	F			12823 Murphy Grove Terrace	McLean	Phase 1B-3 8-98001C	2 of 3	12/17/2001	X	
93	47	F			12825 Murphy Grove Terrace	McLean	Phase 1B-3 8-98001C	2 of 3	12/17/2001	X	
94											
95	1	H			12905 Clarks Crossing Drive	McLean	Phase 2 8-02014	3 of 11	10/14/2004	X	
96	2	H			12907 Clarks Crossing Drive	McLean	Phase 2 8-02014	3 of 11	10/14/2004	X	
97	3	H			12909 Clarks Crossing Drive	McLean	Phase 2 8-02014	3 of 11	10/14/2004	X	
98	4	H			12911 Clarks Crossing Drive	McLean	Phase 2 8-02014	3 of 11	10/14/2004	X	
99	5	H			12913 Clarks Crossing Drive	McLean	Phase 2 8-02014	3 of 11	10/14/2004	X	
100	6	H			12915 Clarks Crossing Drive	McLean	Phase 2 8-02014	3 of 11	10/14/2004	X	
101	7	H			12917 Clarks Crossing Drive	McLean	Phase 2 8-02014	3 of 11	10/14/2004	X	
102	8	H			12919 Clarks Crossing Drive	McLean	Phase 2 8-02014	3 of 11	10/14/2004	X	
103	9	H			12921 Clarks Crossing Drive	McLean	Phase 2 8-02014	3 of 11	10/14/2004	X	
104	10	H			12923 Clarks Crossing Drive	McLean	Phase 2 8-02014	3 of 11	10/14/2004	X	
105	11	H			12925 Clarks Crossing Drive	McLean	Phase 2 8-02014	3 of 11	10/14/2004	X	
106	12	H			12927 Clarks Crossing Drive	McLean	Phase 2 8-02014	3 of 11	10/14/2004	X	
107	19	H			23752 Clarksmeade Drive	Annapolis	Phase 2 8-02014	3 of 11	10/14/2004	X	
108	20	H			23750 Clarksmeade Drive	Annapolis	Phase 2 8-02014	3 of 11	10/14/2004	X	
109	21	H			23748 Clarksmeade Drive	Annapolis	Phase 2 8-02014	3 of 11	10/14/2004	X	
110	22	H			23746 Clarksmeade Drive	Annapolis	Phase 2 8-02014	3 of 11	10/14/2004	X	
111	23	H			23744 Clarksmeade Drive	Annapolis	Phase 2 8-02014	3 of 11	10/14/2004	X	
112	24	H			23742 Clarksmeade Drive	Annapolis	Phase 2 8-02014	3 of 11	10/14/2004	X	
113											
114	33	J			12800 Short Hills Drive	Annapolis II	Phase 2 8-02014	4 of 11	10/14/2004	X	
115	34	J			12802 Short Hills Drive	Annapolis	Phase 2 8-02014	4 of 11	10/14/2004	X	
116	35	J			12804 Short Hills Drive	Annapolis	Phase 2 8-02014	4 of 11	10/14/2004	X	
117	36	J			12806 Short Hills Drive	Annapolis	Phase 2 8-02014	4 of 11	10/14/2004	X	
118	40	J			12801 Short Hills Drive	McLean	Phase 2 8-02014	4 of 11	10/14/2004	X	
119	41	J			12803 Short Hills Drive	McLean	Phase 2 8-02014	4 of 11	10/14/2004	X	
120	42	J			12805 Short Hills Drive	McLean	Phase 2 8-02014	4 of 11	10/14/2004	X	
121	43	J			12807 Short Hills Drive	McLean	Phase 2 8-02014	4 of 11	10/14/2004	X	
122	44	J			12809 Short Hills Drive	McLean	Phase 2 8-02014	4 of 11	10/14/2004	X	
123	45	J			12811 Short Hills Drive	McLean	Phase 2 8-02014	4 of 11	10/14/2004	X	
124											
125	Parcel B	M (11)			13043 Clarksburg Square Road	Madison	Phase 2 8-02014	8 of 11	10/14/2004		X
126	Parcel B	M (12)			13045 Clarksburg Square Road	Jefferson	Phase 2 8-02014	8 of 11	10/14/2004		X
127	Parcel B	M (13)			13039 Clarksburg Square Road	Madison	Phase 2 8-02014	8 of 11	10/14/2004		X
128	Parcel B	M (14)			13041 Clarksburg Square Road	Jefferson	Phase 2 8-02014	8 of 11	10/14/2004		X
129	Parcel B	M (15)			13035 Clarksburg Square Road	Madison	Phase 2 8-02014	8 of 11	10/14/2004		X
130	Parcel B	M (16)			13037 Clarksburg Square Road	Jefferson	Phase 2 8-02014	8 of 11	10/14/2004		X
131	Parcel B	M (17)			13031 Clarksburg Square Road	Madison	Phase 2 8-02014	8 of 11	10/14/2004		X
132	Parcel B	M (18)			13033 Clarksburg Square Road	Jefferson	Phase 2 8-02014	8 of 11	10/14/2004		X
133	Parcel B	M (19)			13027 Clarksburg Square Road	Madison	Phase 2 8-02014	8 of 11	10/14/2004		X
134	Parcel B	M (20)			13029 Clarksburg Square Road	Jefferson	Phase 2 8-02014	8 of 11	10/14/2004		X
135	52	M	50	M	12947 Clarksburg Square Road	Annapolis II	Phase 2 8-02014	8 of 11	10/14/2004	X	
136	53	M	51	M	12949 Clarksburg Square Road	Annapolis	Phase 2 8-02014	8 of 11	10/14/2004	X	
137	54	M	52	M	12951 Clarksburg Square Road	Annapolis II	Phase 2 8-02014	8 of 11	10/14/2004	X	
138	55	M	53	M	12953 Clarksburg Square Road	Annapolis	Phase 2 8-02014	8 of 11	10/14/2004	X	
139	56	M	54	M	12955 Clarksburg Square Road	Annapolis	Phase 2 8-02014	8 of 11	10/14/2004	X	
140	57	M	55	M	12957 Clarksburg Square Road	Annapolis II	Phase 2 8-02014	8 of 11	10/14/2004	X	
141	58	M	56	M	12959 Clarksburg Square Road	Annapolis II	Phase 2 8-02014	8 of 11	10/14/2004	X	
142	59	M	57	M	13001 Clarksburg Square Road	Kensington	Phase 2 8-02014	8 of 11	10/14/2004		X
143	60	M	58	M	13003 Clarksburg Square Road	Kensington	Phase 2 8-02014	8 of 11	10/14/2004		X
144	61	M	59	M	13005 Clarksburg Square Road	18' MPDU	Phase 2 8-02014	8 of 11	10/14/2004		X
145	62	M	60	M	13007 Clarksburg Square Road	18' MPDU	Phase 2 8-02014	8 of 11	10/14/2004		X
146	63	M	61	M	13009 Clarksburg Square Road	Kensington	Phase 2 8-02014	8 of 11	10/14/2004		X
147	64	M	62	M	13011 Clarksburg Square Road	Kensington	Phase 2 8-02014	8 of 11	10/14/2004		X
148	65	M	63	M	13013 Clarksburg Square Road	Kensington	Phase 2 8-02014	8 of 11	10/14/2004		X
149	66	M	64	M	13015 Clarksburg Square Road	Kensington	Phase 2 8-02014	8 of 11	10/14/2004		X
150	67	M	65	M	13017 Clarksburg Square Road	18' MPDU	Phase 2 8-02014	8 of 11	10/14/2004		X
151	68	M	66	M	13019 Clarksburg Square Road	18' MPDU	Phase 2 8-02014	8 of 11	10/14/2004		X
152	69	M	67	M	13021 Clarksburg Square Road	Kensington	Phase 2 8-02014	8 of 11	10/14/2004		X
153	70	M	68	M	13023 Clarksburg Square Road	Kensington	Phase 2 8-02014	8 of 11	10/14/2004		X
154											
155	Parcel B				13022-13040 Clarksburg Square Rd						

Exhibit 1
 Craftstar Homes, Inc.
 Clarksburg Town Center
 Settled Units and Those Units Under Construction and Under Contract with Craftstar Customers
 May 31, 2005

	A	B	C	D	E	F	G	H	I	J	K
1			Previous Lot and				Applicable Site Plan				
2	Record Plat		Block on Signature				Signature Set				
3	LOT	BLOCK	Set (if applicable)		ADDRESS	Housetype	Site Plan	Sheet No.	Date	Unit Settled	Unit Under Constr & Under Contract
156	Units 1-10	S			(Ten 2-over-2 units	Jefferson/Madison	Phase 2 8-02014	7 of 11	10/14/2004	X	
157											
158	1	AA			23624 Overlook Park Drive	Annapolis	Phase 1A 8-98001C	5 of 11	5/30/2003	X	
159	2	AA			23626 Overlook Park Drive	Annapolis II	Phase 1A 8-98001C	5 of 11	5/30/2003	X	
160	3	AA			23628 Overlook Park Drive	Annapolis II	Phase 1A 8-98001C	5 of 11	5/30/2003	X	
161	4	AA			23630 Overlook Park Drive	Annapolis II	Phase 1A 8-98001C	5 of 11	5/30/2003	X	
162	5	AA			23632 Overlook Park Drive	Annapolis	Phase 1A 8-98001C	5 of 11	5/30/2003	X	
163	6	AA			23634 Overlook Park Drive	Annapolis	Phase 1A 8-98001C	5 of 11	5/30/2003	X	
164	7	AA			23636 Overlook Park Drive	Annapolis	Phase 1A 8-98001C	5 of 11	5/30/2003	X	
165	8	AA			23640 Overlook Park Drive	Annapolis II	Phase 1A 8-98001C	5 of 11	5/30/2003	X	
166	9	AA			23642 Overlook Park Drive	Annapolis	Phase 1A 8-98001C	5 of 11	5/30/2003	X	
167	10	AA			23644 Overlook Park Drive	Annapolis	Phase 1A 8-98001C	5 of 11	5/30/2003	X	
168	11	AA			23646 Overlook Park Drive	Annapolis II	Phase 1A 8-98001C	5 of 11	5/30/2003	X	
169											
170	1	EE			23626 Public House Road	McLean	Phase 1A 8-98001C	4 of 11	5/30/2003	X	
171	2	EE			23628 Public House Road	McLean	Phase 1A 8-98001C	4 of 11	5/30/2003	X	
172	3	EE			23630 Public House Road	McLean	Phase 1A 8-98001C	4 of 11	5/30/2003	X	
173	4	EE			23632 Public House Road	McLean	Phase 1A 8-98001C	4 of 11	5/30/2003	X	
174	5	EE			23634 Public House Road	McLean	Phase 1A 8-98001C	4 of 11	5/30/2003	X	
175	6	EE			23612 Public House Road	Kensington	Phase 1A 8-98001C	4 of 11	5/30/2003	X	
176	7	EE			23614 Public House Road	Kensington	Phase 1A 8-98001C	4 of 11	5/30/2003	X	
177	8	EE			23616 Public House Road	18' MPDU	Phase 1A 8-98001C	4 of 11	5/30/2003	X	
178	9	EE			23618 Public House Road	18' MPDU	Phase 1A 8-98001C	4 of 11	5/30/2003	X	
179	10	EE			23620 Public House Road	Kensington	Phase 1A 8-98001C	4 of 11	5/30/2003	X	
180	11	EE			23622 Public House Road	Kensington	Phase 1A 8-98001C	4 of 11	5/30/2003	X	
181	12	EE			23600 Public House Road	Kensington	Phase 1A 8-98001C	4 of 11	5/30/2003	X	
182	13	EE			23602 Public House Road	Kensington	Phase 1A 8-98001C	4 of 11	5/30/2003	X	
183	14	EE			23604 Public House Road	18' MPDU	Phase 1A 8-98001C	4 of 11	5/30/2003	X	
184	15	EE			23606 Public House Road	18' MPDU	Phase 1A 8-98001C	4 of 11	5/30/2003	X	
185	16	EE			23608 Public House Road	Kensington	Phase 1A 8-98001C	4 of 11	5/30/2003	X	
186	17	EE			23610 Public House Road	Kensington	Phase 1A 8-98001C	4 of 11	5/30/2003	X	
187											
188	1	FF			23439 Clarksridge Road	Annapolis II	Phase 1A 8-98001C	3 of 11	5/30/2003	X	
189	2	FF			23437 Clarksridge Road	Annapolis II	Phase 1A 8-98001C	3 of 11	5/30/2003	X	
190	3	FF			23435 Clarksridge Road	Annapolis	Phase 1A 8-98001C	3 of 11	5/30/2003	X	
191	4	FF			23433 Clarksridge Road	Annapolis	Phase 1A 8-98001C	3 of 11	5/30/2003	X	
192	5	FF			23431 Clarksridge Road	Annapolis	Phase 1A 8-98001C	3 of 11	5/30/2003	X	
193	6	FF			23429 Clarksridge Road	Annapolis	Phase 1A 8-98001C	3 of 11	5/30/2003	X	
194	7	FF			23427 Clarksridge Road	Annapolis II	Phase 1A 8-98001C	3 of 11	5/30/2003	X	
195	8	FF			23425 Clarksridge Road	Annapolis II	Phase 1A 8-98001C	3 of 11	5/30/2003	X	
196	9	FF			23423 Clarksridge Road	Annapolis	Phase 1A 8-98001C	3 of 11	5/30/2003	X	
197	10	FF			23421 Clarksridge Road	Annapolis	Phase 1A 8-98001C	3 of 11	5/30/2003	X	
198	11	FF			23419 Clarksridge Road	Annapolis	Phase 1A 8-98001C	3 of 11	5/30/2003	X	
199	12	FF			23417 Clarksridge Road	Annapolis	Phase 1A 8-98001C	3 of 11	5/30/2003	X	
200	13	FF			23415 Clarksridge Road	Annapolis II	Phase 1A 8-98001C	3 of 11	5/30/2003	X	
201											

SHULMAN ROGERS GANDAL PORDY & ECKER, P.A.

Lawrence A. Shulman
Donald R. Rogers
Karl L. Ecker†
David A. Pordy*
David D. Freibust
Martin P. Schaffer
Christopher C. Roberts
Jeffrey A. Shano
Edward M. Hanson, Jr.
David M. Kochanski
James M. Kofaiver
Robert B. Cantor
Daniel S. Krakower
Kevin P. Kennedy
Alan B. Sternstein
Nancy P. Regelin
Samuel M. Spirito*

Martin Levine
Worthington H. Tilson, Jr.*
Fred S. Sommer
Morton A. Faller
Alan S. Tilles
James M. Hoffman
Michael V. Nakamura
Jry M. Eisenberg*
Douglas K. Hirsch
Ross D. Cooper
Glenn C. Eclston
Karl J. Prodi, Jr.*
Timothy Dugan*
Kim Yui Floratino
Sean P. Sherman*
Gregory D. Grant*
Jacob S. Frankel*

Rebecca Oshowsky
Ashley Joel Gardner
Michael J. Froehlich
William C. Davis, III
Patrick M. Marryn
Sandy David Baron
Christine M. Sorge
Michael L. Kabik
Jeffrey W. Rubin
Simon M. Nadler
Scott D. Muscles
Karl W. Means
Debra S. Friedman*
Matthew M. Moore*
Daniel H. Handman
Eric J. von Varys
Michelle R. Curtis*

Gary I. Horowitz
Cara A. Frye*
Heather L. Howard
Stephen A. Metz
Hong Suk "Paul" Chung
Lisa C. DeLazio*
Patrick J. Howley
Glenn W.D. Golding*
Carmen J. Morgan*
Kristin E. Draper*
Heather L. Spurrer*
Melissa G. Bornstein
Patricia Tuck
Robert L. Ritzer*
Daniel H. Anix
Jacob A. Ginsberg
Meryl A. Kessler*

John D. Sadler
Of Counsel
Larry N. Gandal
Leonard R. Goldstein
Richard P. Meyer*
William Robert King
Larry A. Gordon*
David E. Weisman
Lawrence Eiscaberg
Deborah L. Marx
Mimi L. Maggs
Scott D. Field
Special Counsel
Philip R. Hochberg*
Maryland and D.C.
except as noted:
* Virginia also * D.C. only
* Maryland only † Retired

Writer's Direct Dial Number:
(301) 230-5228
tdugan@srgpe.com

June 6, 2005

Hand Delivered

The Honorable Derick Berlage
Chair, The Montgomery County Planning Board
The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Craftstar Homes, Inc.
Clarksburg Town Center
Site Plan Nos.: 8-98001 and 8-02014 (the "Site Plans")
Project Plan No. 9-94004 (the "Project Plan")
Setbacks and Request to Approve Amendments to
the Project Plan and the Site Plans

Dear Chairman Berlage and the Other Members of the Planning Board:

We represent Craftstar Homes, Inc. and its LLC affiliates (together, "Craftstar"), one of the owners and builders building the "two over two" townhouse condominiums and the fee simple, single family attached ("SFA") townhouses at the Clarksburg Town Center (collectively, the "Townhouses"). Due to the confusion created by the differing Building Restriction Line ("BRL") information on the applicable signature sets,¹ the stake outs performed by Craftstar's contractor civil engineers resulted in the as-built footprint for some of Craftstar's duly approved Townhouses encroaching across the more restrictive BRL specifications called out in the corresponding Tables (collectively, the "Setback Issue"). Attached at Exhibit 1 is a list of (1) the occupied Craftstar dwellings and (2) those that are under construction and under contract with Craftstar customers (again, both SFAs and 2-over-2 condominium Townhouses), that are believed to be involved and in need of the relief requested herein. At Exhibit 2 are as-built surveys demonstratively showing the magnitude of each arguable encroachment at issue. Both

¹ In short, the BRL envelopes schematically depicted on the signature sets, in some instances, are less onerous than appear on the conflicting tables ("Tables") copied onto those corresponding sheets of the applicable signature sets.

the list at Exhibit 1 and the surveys at Exhibit 2 were provided to us by Charles P. Johnson & Associates, Inc.² (What the enclosed as-built surveys depict is explained further below.)

For the reasons that follow, Craftstar respectfully requests that the Planning Board revise the Project Plan and the Site Plans to eliminate those arguable encroachments over such BRLs shown in the referenced Tables.

Further, we respectfully request a hearing as soon as possible, if not before the Board's planned June 16, 2005 hearing, then as part of such hearing. Whether or not other issues are considered on June 16, 2005, we request a hearing to consider our request, as soon as possible, which we believe may be considered (and action taken thereon) without coupling it with the other matters that the Planning Board will be addressing.

We respectfully recommend that the Planning Board bifurcate the resolution of the setback matter explained in this letter (and the height matter discussed in our May 31, 2005 letter to the Board) so that the Planning Board may:

- expeditiously reassure Craftstar's innocent customers that their homes will not have to be moved or otherwise altered; and
- through a separate proceeding, conduct whatever investigation and determine whatever possible resulting plan of compliance the Board deems appropriate to comprehensively resolve the matter.

More particularly, our petition on behalf of Craftstar's customers is that the Planning Board approve, pursuant to its authority,³ (either through Staff and/or from the

² The point of this request is not to point fingers or even to excuse whatever as-built encroachments into the applicable BRL envelope may exist for these properties. While explanations do exist (indeed, the applicability of the more restrictive Tables, or the less restrictive BRL parameters schematically shown on the currently approved signature sets is certainly debatable, both legally and factually), the purpose of this submission is to solve whatever issues or problems a putative BRL encroachment might cause for the innocent Craftstar customers who have lawfully occupied these homes and those whose homes were underway when the matter was brought to Craftstar's attention. In short, if a penalty is to be assessed (which Craftstar is not conceding), then it should not be imposed on those innocent Craftstar purchasers. Respectfully, the subject Setback Issues should be solved for those innocent customers now, regardless of any penalty phase of these discussions which might be held over for future determination at a future date.

³ The Planning Board derives its authority from: (1) Section 59-D-3.6 of the Montgomery County Zoning Ordinance, which allows the Planning Board to consider a site plan violation on its own motion and effect a plan of compliance; (2) Section 59-D-3.7 and Section 59-D-2.6(b)(1), whereby the Planning Board may amend the Site Plans and the Project Plan; and (3) Section 59-D-2.9 and Chapter 50, Section 50-6 of the Subdivision Regulations, which authorizes the Planning Board to enforce the Project Plan conditions of approval. We further note that although an initial project plan application may require a minimum notice period, the statute does not provide one for an amendment; therefore, we respectfully suggest that the Planning Board may conduct proceedings to amend both the Site Plans and the Project Plan without providing a minimum of 60 days notice. *Please see* Section 59-D-2.2.

entire Board, whichever the Board decides is appropriate) the setbacks of the various as-built SFA and 2-over-2 units which have either: (i) been sold and conveyed to Craftstar customers; or (ii) are under construction and under a contract of sale to Craftstar customers ("outsale contract"). Our proposed amendment would act to remove any possible cloud on those transactions (for the benefit of Craftstar's customers) concerning any alleged violation of the disputed minimum setback limitations that may ultimately be determined to exist, whether built and sold or under construction and subject to outsale contracts with Craftstar customers.

As for implementation, especially in light of the need for immediate action, we respectfully suggest to the Planning Board that it has the authority to implement the requested amendment by having each of the as built surveys included in Exhibit 2 (which are described below in more detail) signed evidencing approval, or by having copies of the affected signature set site plans signed, again, for very prompt implementation. Nonetheless, we believe that the surveys enclosed as Exhibit 2 may be used and would be adequate.

The subject units fall into the following four (4) categories:

- (i) settled and conveyed SFAs;
- (ii) settled and conveyed 2-over-2s;
- (iii) under contract and lawfully permitted SFAs (in various stages of construction); and
- (iv) under contract and lawfully permitted 2-over-2s (in various stages of construction).

The surveys for the Townhouses at Exhibit 2 show for each Townhouse: (1) the "as built" building footprint line; and (2) the applicable Table Setback line, and, in some instances, more restrictive Setback lines that may arguably apply, in a worst case interpretation of the development approvals, in the interest of providing the Planning Board (and its Staff) full information. For example, in the case of 2 over 2 condominium parcels, where the Craftstar units have separate entrances to the outside of the building and have separate outdoor space, the development approvals have been interpreted to mean that such units could utilize the "townhouse" setback standards, even though they may be characterized for other purposes as multi-family units.⁴ Thus, in certain circumstances, we show other possible/arguable setbacks as well.

Although the enclosures reflect the circumstances to the best of our knowledge and belief, we respectfully reserve the right to supplement and refine them.

⁴ Please contrast such units, which are how the Craftstar 2 over 2's are designed, with ones that have a common door leading to the individual unit entrances or that have no outdoor space, which we understand have been interpreted to be multi-family units for setback purposes.

1) Request to Amend the Plans For the Benefit of Craftstar's Customers

For the reasons explained below, and to resolve the referenced Setback Issues for the benefit of its customers, Craftstar respectfully requests that the Planning Board immediately exercise its authority to amend the Project Plan and the Site Plans affecting the Craftstar Townhouses described in Exhibits 1 and 2, and by its authorization "re-draw" any applicable BRL encroached upon by those as-built homes so that the revised BRL "tracks around" any portions of those as-built footprints currently encroaching, and so those buildings are in compliance with the revised BRL.

We are asking for expedited Planning Board action because, before the setback encroachments are authorized through the amendments, the affected Craftstar homeowners may suffer undue prejudice regarding the marketability of title, if, for example, they attempt to sell or refinance their properties. Because it is uncertain when the Board's investigation of the entire matter will be completed, those innocent customers may suffer the aforesaid prejudice in the interim. Hence, time is of the essence.

The proposed amendments are equally necessary to establish for them that the Townhouses are conforming uses, so that each building may be structurally altered, replaced or repaired, as long as the building complies with the development approvals, as amended.

The proposed action would be fair, because none of Craftstar's customers deserve any "blame" (if any ought to be assigned) in regard to the subject Setback Issues. Indeed, not even the Clarksburg Town Center Advisory Committee (the "CTCAC"), which has taken issue with various parts of the approvals for the project, has asked that any in-kind corrections (as in demolition or modification of as-built/occupied improvements) result from these Setback Issues.

Further the Planning Board need not question Craftstar's intentions for requesting such action. Although Craftstar acted in good faith, it is not seeking to avoid, but plans to participate in the further consideration of what gave rise to the Setback Issues. With this request, Craftstar simply wishes to avoid any undeserved prejudice being visited upon its customers. Clearly, they played no role in creating the referenced Setback Issues.

Under the totality of the circumstances, the Planning Board's prompt amendment will implement the only reasonable and fair solution, and will avoid unnecessary hardship being unfairly visited upon innocent parties. To that end, we ask that you consider the following explanation.

2) Discussion

The salient facts (upon our information and belief), at least as they pertain to Craftstar's customers, appear to be as follows:

- For the Townhouses in question, some of the setbacks -- that are drawn/depicted on the signature set Site Plans (the "Depicted

Setbacks") -- are less than the minimum setback provided in the Tables included as general notations on that same sheet of the signature set (the "Tables Setbacks").

- The setback requirements for the Townhouses differ among the signature set Site Plans.
- The Depicted Setbacks were relied upon and followed through the entire review and approval process.
- Craftstar's outside/contractor engineers staked out the building restrictions/setbacks in the field, based upon the Depicted Setbacks, not advertng to the arguably inconsistent (and more restrictive) specifications in the corresponding Tables.
- Relying on the stake outs in the field, Craftstar constructed the Townhouses within the Depicted Setbacks, *albeit* not always and totally within the more restrictive setback parameters in the Tables. See Exhibits 1 and 2. Only after the buildings were constructed, or were under construction and under contract with Craftstar customers, did Craftstar learn of the Setback Issue. (Please note that none of the Tables setback encroachments extend over the boundary line between two separate properties.)
- Under the circumstances, it appears that no one noticed the discrepancies, and building permit applications were reviewed and approved by Park and Planning and Montgomery County, and permits were released, and Use and Occupancy certificates (for the 2-over-2 condominiums) and final inspections (for the fee simple townhouses) were issued, all based upon the Depicted Setbacks.
- The Townhouses in question are listed in the chart at Exhibit 1.

Craftstar relied in good faith on the stake out of its outside contractor/engineer when constructing its homes to place those improvements within the BRL-defined building envelopes. Even so, the Planning Board may demand a further investigation of the facts before determining responsibility, if any, as to Craftstar. However, granting this request to assist Craftstar's customers should not be delayed for that remaining investigation (if any), because it will not alter the fact that Craftstar's customers are innocent of all culpability in regard to same. As for Craftstar Homes, it will cooperate with the Planning Board in addressing and resolving any remaining issues. With this request, our client simply intends to avert any hardship for its customers in regard to the subject Setback Issue, by having the resolution of the issues bifurcated as explained earlier.

3) Explanation In Support of the Request to Amend the Site Plans

In amending the Plans, the Planning Board would be following a remedy that the courts afford in analogous situations. Thus, we believe that the Planning Board's solution would be well-founded and just. Where one private property owner's building encroaches onto another's land, the courts have the ability to apply the "Doctrine of Comparative Hardship" which may avoid demolition. (Of course, the instant case involves a different circumstance. The Townhouses do not encroach upon another's private property; they only encroach upon the minimum setback.) In the instant case, the Planning Board would resolve the setback issue by amending the development approvals and implementing a solution less harsh than demolition, in keeping with that equitable doctrine.

The following quotation explains the doctrine and the remedy:

The preferred remedy for encroachment is an injunction ordering removal of the encroaching structure. In *Lichtenberg [v. Sachs]*, 213 Md 147, 131 A.2d 264 (1957)] . . . , a landowner built a house over his neighbor's right of way and provided comparable access and money damages. We there noted that allowing a landowner to relocate a right of way and pay damages 'amounts to a request that private property be taken for private use. No court has authority to compel the owner of land to surrender his property to another person, lacking the power of eminent domain, in exchange for a sum of money . . .' *Id.* at 152, 131 A.2d 264. Thus, courts generally grant injunctive relief when an encroachment is found.

In *Easter v. Dundalk Holding Co.*, 199 Md. 303, 86 A.2d 404 (1952), we established an exception to the general rule. Dundalk built a movie theater encroaching on Easter's land. . . . Easter obtained a judgment for ejectment that was affirmed by this Court in 1950. In 1952, we refused to enjoin enforcement of the ejection. . . . We recognized, however, that there might be circumstances in which a court would refuse to order the removal of an encroaching structure; we said:

[I]t is an accepted rule that where a landowner by innocent mistake, erects a building which encroaches on adjoining land, and an injunction is sought by the owner of the land encroached upon, the court will balance the benefit of an injunction to the complainant against the inconvenience and damage to the defendant, and where the occupation does no damage to the complainant,

except the mere occupancy of a comparatively insignificant part of his lot, or the building does not interfere with the value or use of the rest of his lot, the court may decline to order the removal of the building and leave the adjoining landowner to his remedy at law.

(*Emphasis added.*) *Urban Site Venture II, Ltd. Partnership v. Levering Associates Ltd. Partnership*, 340 Md. 223, 230-231, 665 A.2d 1062, ____ (1995).⁵

Below, we apply the concepts underlying the Doctrine of Comparative Hardship.

Surely, as noted earlier, Craftstar's customers are innocent. They had no role in locating and constructing their homes. Thus, they are not "culpable," even by mistake.

If the putative setback mistakes were intrinsically harmful, then the Planning Board might be prevented from alleviating Craftstar's customers' predicament. That is not the case, however. The setback mistakes caused no measurable damage. The existing homes, although arguably at odds with the Table setbacks (a technical violation), are compatible with the neighborhood. The setbacks for the existing buildings are not intrinsically "harmful," in contrast to, for example, if they were located in an area that jeopardized public health and safety, which might mandate that the homes be pulled down and/or branded nonconforming, notwithstanding the harsh results. Rather, the Townhouses fit within the fabric of the Clarksburg Town Center. Finally, we are not aware of any existing conditions that offend the Master Plan.

Again, the Townhouses do not encroach onto another's private property. They arguably encroach upon the BRL described in the aforesaid Tables. Craftstar's customers are not taking another's property or attempting to use the government to unlawfully exercise eminent domain. Those customers arguably have a technical violation of the Tabled BRLs. The current situation, therefore, seems less extreme than the underlying facts involving the Doctrine of Comparative Hardship, where a trespasser has encroached upon another's private property. Therefore, our recommended remedy appears to be within the scope of a just and prudent remedy that the courts would see fit to apply.

4) Recommended Implementation Plan

For all of the reasons explained herein, we respectfully request that the Planning Board take the following actions.

- a) Amend the Project Plan and the Site Plans pertaining to the BRL by expressly permitting the above-listed Townhouses to have the minimum setbacks equal to

⁵ See also, *Beane v. Prince George's County*, 20 Md.App. 383, 315 A.2d 777 (1974); and D. Dobbs, *Handbook on the Law of Remedies* Section 5.6, at 355-357 (1973).

SCALE: 1"=30'
MARYLAND STATE PLANE
NAD 83/91



⑥

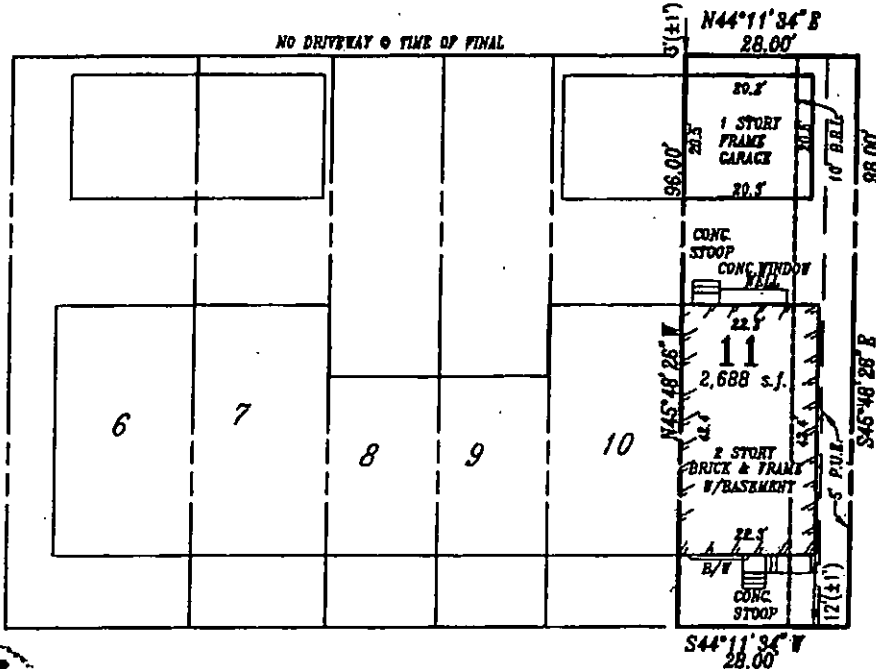
AS-BUILT SET BACK EXHIBIT
 23622 PUBLIC HOUSE ROAD
 LOT 11, BLOCK EE
CLARKSBURG TOWN CENTER
 CLARKSBURG (2nd) ELECTION DISTRICT
 MONTGOMERY COUNTY, MARYLAND

SCALE: 1"=30'
 MARYLAND STATE PLANE
 DATUM (MD 83/91)

EE

PARCEL A

NO DRIVEWAY @ TIME OF FINAL



STREET B.R.L. ENCROACHMENT (4' ± 1' FOR MAIN BLDG.)
 (3' ± 1' FOR ACCESSORY BLDG.)

PUBLIC HOUSE ROAD
 (80' R/W)

PARCEL A

LEGEND:

B.R.L. PER SIGNATURE SET TABLE OF SETBACKS

EXISTING BUILDING LINE.

P.U.E.

**BUILDING RESTRICTION LINES AS PER THE APPROVED
 SIGNATURE SET TABLE OF SETBACKS:**

FROM ANY STREET 10'
 FRONT YARD: N/A
 SIDE YARD: 0'
 REAR YARD: AS SHOWN

SITE PLAN NO: PHASE 1A 8-98001C
 SHEET NO: 4 OF 11
 DATE OF APPROVAL: 05/30/03

I HEREBY CERTIFY THAT THE INFORMATION
 SHOWN HEREON IS CORRECT AND WAS ESTABLISHED
 USING ACCEPTED LAND SURVEYING PRACTICES

[Signature]

RONALD L. COLLIER
 PROFESSIONAL LAND SURVEYOR
 MD. No. 20014

CPI
 Associates

Charles P. Johnson & Associates, Inc.
 PLANNERS • ENGINEERS • LANDSCAPE ARCHITECTS • SURVEYORS
 551 ELTON ROAD SUITE 300 SILVER SPRING, MARYLAND 20903
 PHONE: 301-404-7000 E-MAIL: cpj@cpja.com TEL: 301-404-5394
 FREDERICK, MD FAX: 301-404-5394

REFERENCE	Drawn by	REB	Checked by	RLC
Plot Book N/A	Date	04/17/02	Record No.	
Plot No. 21971	Scale	1"=30'	31-162-88.11	EB

Dwg: N:\29100\dwg\88-11EE1 Xref:

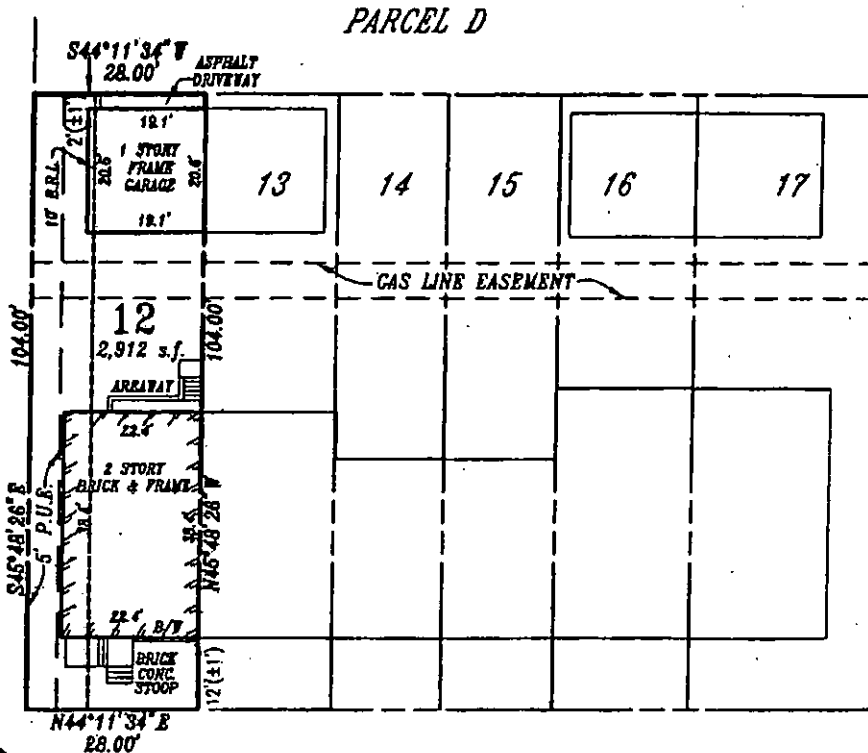
7

AS-BUILT SET BACK EXHIBIT
23600 PUBLIC HOUSE ROAD
LOT 12 BLOCK EE
CLARKSBURG TOWN CENTER
CLARKSBURG (2nd) ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND

SCALE: 1"=30'
MARYLAND STATE PLANE
NAD 83/91

PUBLIC HOUSE ROAD
(60' R/W)

STREET R.L. ENCROACHMENT (4'± 1' FOR MAIN BLDG)
(1'± 1' FOR ACCESSORY BLDG)



EE

PARCEL D

PARCEL D

LEGEND:

- B.R.L. PER SIGNATURE SET TABLE OF SETBACKS
- ~~~~~ EXISTING BUILDING LINE.
- P.U.E.



BUILDING RESTRICTION LINES AS PER THE APPROVED
SIGNATURE SET TABLE OF SETBACKS:

FROM ANY STREET 10'
FRONT YARD: N/A
SIDE YARD: 0'
REAR YARD: AS SHOWN

SITE PLAN NO: PHASE 1A 8-98001C
SHEET NO: 4 OF 11
DATE OF APPROVAL: 05/30/03

I HEREBY CERTIFY THAT THE INFORMATION
SHOWN HEREON IS CORRECT AND WAS ESTABLISHED
USING ACCEPTED LAND SURVEYING PRACTICES

RONALD L. COLLIER
PROFESSIONAL LAND SURVEYOR
MD. No. 20014

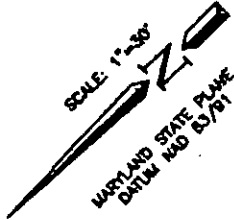
CPJ
Associates

Charles P. Johnson & Associates, Inc.
PLANNERS - ENGINEERS - LANDSCAPE ARCHITECTS - SURVEYORS
850 ELTON ROAD SUITE 300 SILVER SPRING, MARYLAND 20900
Phone: 301-434-7000 E-mail: cpj@cpja.com Fax: 301-434-8394
FREDERICK MD TAIKPAI VA

REFERENCE	Drawn by		Checked by	
	REB	REB	RLC	RLC
Plot Book	N/A		Date	
Plot No.	21971		04/17/02	
	Scale		1"=30'	
			Record No.	
			31-162-88.12	

Dwg: N:\29100\dwg\88-12EE1 Xref: 78-12-17EE

8



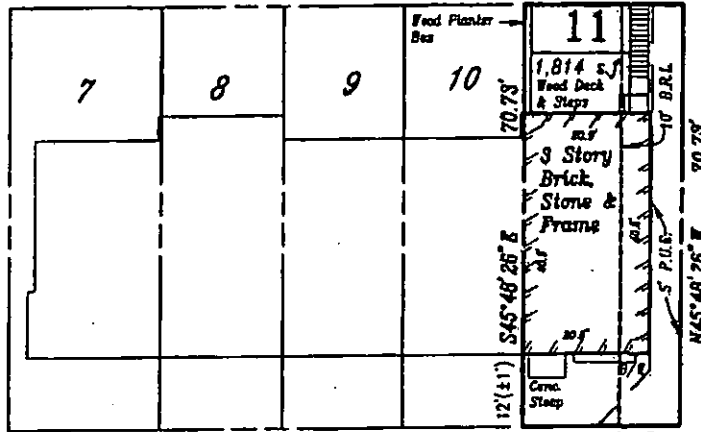
AS-BUILT SET BACK EXHIBIT
23646 OVERLOOK PARK DRIVE
LOT 11, BLOCK AA
CLARKSBURG TOWN CENTER
CLARKSBURG (2nd) ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND

PARCEL A



PARCEL A

TO OVERLOOK
PARK DRIVE



STREET B.R.L. ENCROACHMENT (6' ± 1')

GENERAL STORE DRIVE

(50' R/W)



CLARKSBURG ROAD
(50' R/W)

LEGEND:

____ B.R.L. PER SIGNATURE SET TABLE OF SETBACKS

----- EXISTING BUILDING LINE.

____ P.U.E.

BUILDING RESTRICTION LINES AS PER THE APPROVED
SIGNATURE SET TABLE OF SETBACKS:

FROM ANY STREET 10'
FRONT YARD: N/A
SIDE YARD: 0'
REAR YARD: AS SHOWN

SITE PLAN NO: PHASE 1A 8-98001C
SHEET NO: 5 OF 11
DATE OF APPROVAL: 05/30/03

I HEREBY CERTIFY THAT THE INFORMATION
SHOWN HEREON IS CORRECT AND WAS ESTABLISHED
USING ACCEPTED LAND SURVEYING PRACTICES

RONALD L. COLLIER
PROFESSIONAL LAND SURVEYOR
MD. No. 20014

CPI
Associates

Charles P. Johnson & Associates, Inc.
PLANNERS - ENGINEERS - LANDSCAPE ARCHITECTS - SURVEYORS
751 ELTON ROAD SUITE 300 SILVER SPRING, MARYLAND 20903
Phone: (301) 424-7000 E-mail: cpj@cpja.com Fax: (301) 424-1094
FREDERICK, MD FAIRFAX, VA

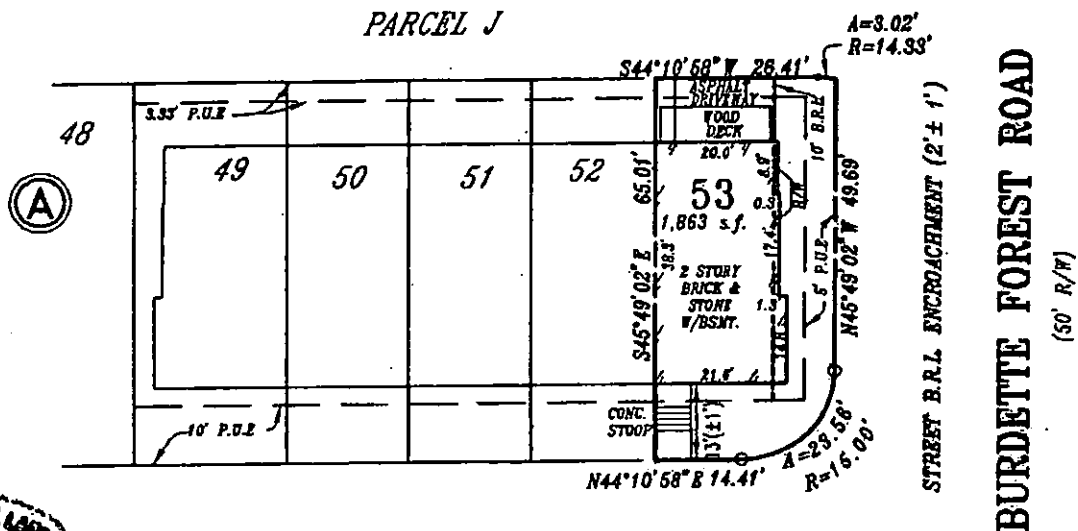
REFERENCE	Drawn by	Checked by	
Plat Book N/A	REB	RLC	RLC
Plat No. 21971	Date 04/17/02	Record No.	
	Scale 1"=30'	31-162-88.11	(AA)

Dwg: N:\29100\dwg\88-11AA1 Xref:

9

12962 CLARKSBURG SQUARE ROAD
LOT 53, BLOCK A
CLARKSBURG TOWN CENTER
CLARKSBURG (2nd) ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND

SCALE 1"=30'
MARYLAND STATE PLANE
DATUM (MAD 83/91)




LEGEND:

P.U.E.

I HEREBY CERTIFY THAT THE INFORMATION SHOWN HEREON IS CORRECT AND WAS ESTABLISHED USING ACCEPTED LAND SURVEYING PRACTICES

RONALD L. COLLIER
PROFESSIONAL LAND SURVEYOR
MD. No. 20014

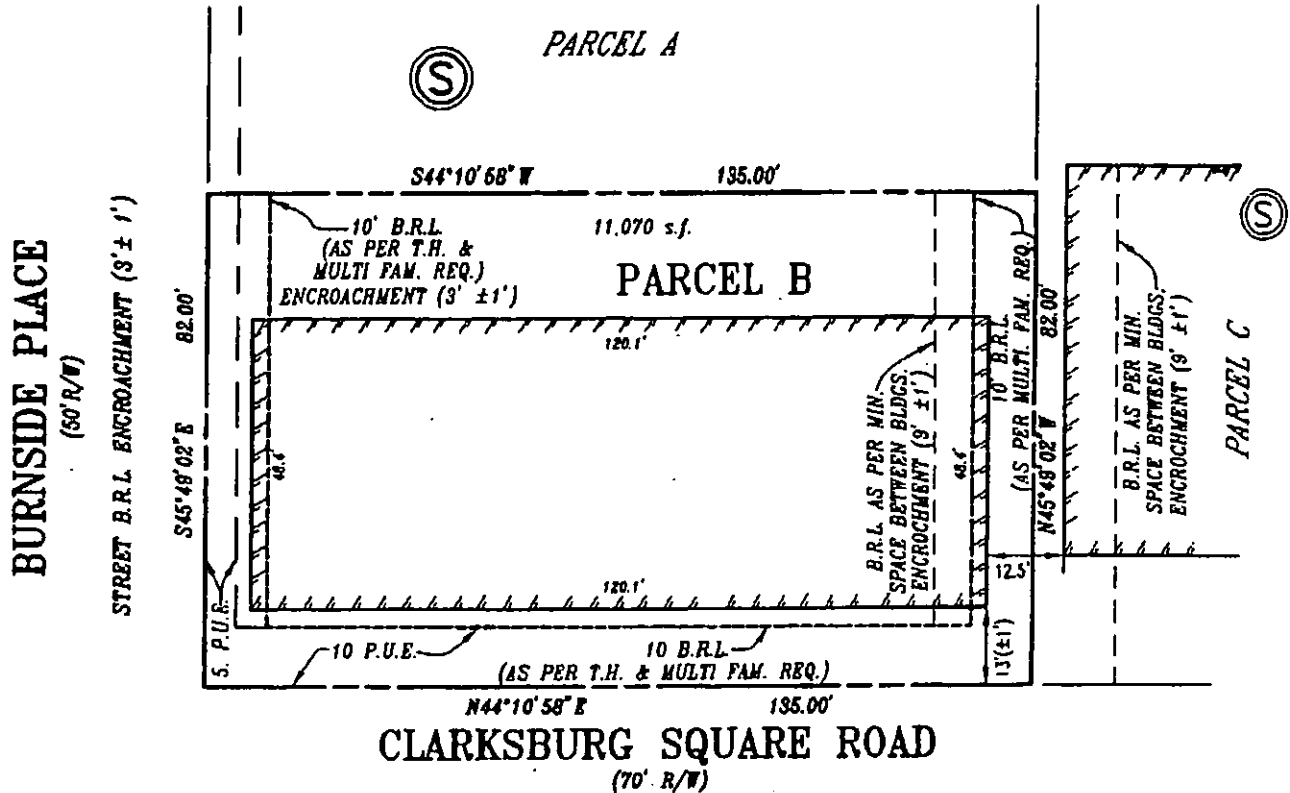
 Charles P. Johnson & Associates, Inc. PLANNERS • ENGINEERS • LANDSCAPE ARCHITECTS • SURVEYORS 751 EILTON ROAD SUITE 300 SILVER SPRING, MARYLAND 20906 Phone: 301-584-1000 E-mail: cpj@cpj.com Fax: 301-584-1094 FREDERICK, MD ARLINGTON, VA	REFERENCE	Drawn by <i>REB</i>	<i>REB</i>	Checked by <i>RLC</i>	<i>RLC</i>
	Plot Book <i>N/A</i>	Date <i>04/17/02</i>	Record No.		
	Plot No. <i>21971</i>	Scale <i>1"=30'</i>	<i>31-162-88.53</i> (A)		

Dwg: N:\29100\dwg\88-53A1 Xref:

10

AS-BUILT SET BACK EXHIBIT
13022 - 13040 CLARKSBURG SQUARE ROAD
 UNITS 1-10, BLOCK S
CLARKSBURG TOWN CENTER
 CLARKSBURG (2nd) ELECTION DISTRICT
 MONTGOMERY COUNTY, MARYLAND

SCALE: 1"=30'
 MARYLAND STATE PLAT
 DATUM (NOV 85/91)



LEGEND:
 ----- B.R.L. PER SIGNATURE SET TABLE OF SETBACKS
 - - - - - EXISTING BUILDING LINE
 ----- P.U.E.
 ----- B.R.L. AS PER MIN. SPACE BETWEEN BLDGS.

**BUILDING RESTRICTION LINES AS PER THE APPROVED
 SIGNATURE SET TABLE OF SETBACKS:**

(AS PER MULTI FAM. REQ.)
 FROM ANY STREET 10'
 FRONT YARD: 10'
 SIDE YARD: 10'/20'
 REAR YARD: AS SHOWN
 MIN. SPACE BETWEEN END BLDGS. 30'

(AS PER T.H. REQ.)
 FROM ANY STREET 10'
 FRONT YARD: N/A
 SIDE YARD: 0'
 REAR YARD: AS SHOWN
 MIN. SPACE BETWEEN END BLDGS. 20/4'
 *MID-BLOCK SEPARATION BETWEEN
 END UNITS MAY BE REDUCED TO 4'

I HEREBY CERTIFY THAT THE INFORMATION
 SHOWN HEREON IS CORRECT AND WAS ESTABLISHED
 USING ACCEPTED LAND SURVEYING PRACTICES

RONALD L. COLLIER
 PROFESSIONAL LAND SURVEYOR
 MD, No. 20014



SITE PLAN NO: PHASE 2 8-02014
 SHEET NO: 7 OF 11
 DATE OF APPROVAL: 10/14/04

CPI
 Associates

Charles P. Johnson & Associates, Inc.
 PLANNERS - ENGINEERS - LANDSCAPE ARCHITECTS - SURVEYORS
 628 ELTON ROAD SUITE 300 SILVER SPRING, MARYLAND 20903
 Phone (301) 404-7000 E-mail: cjohnson@cpja.com Fax: (301) 404-0294
 FREDERICK, MD FAIRFAX, VA

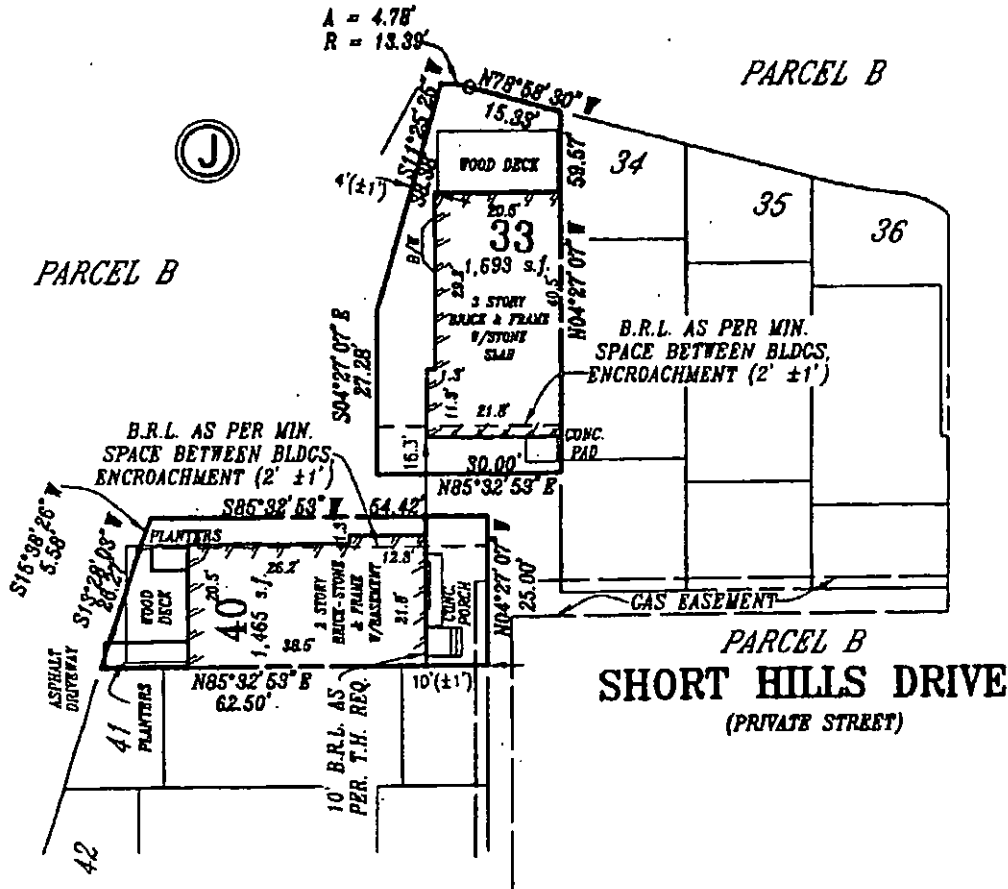
REFERENCE	Drawn by	REB	Checked by	RLC
Plot Book N/A	Date	04/17/02	Record No.	31-162-88.37
Plot No. 21971	Scale	1"=30'	PERCEL B	(S)

Dwg: N:\29100\dwg\88-PARCEL B-S1 Xref:

11

AS-BUILT SET BACK EXHIBIT
12800 SHORT HILLS DRIVE (LOT 33)
12801 SHORT HILLS DRIVE (LOT 40)
LOT 33,40 BLOCK J
CLARKSBURG TOWN CENTER
CLARKSBURG (2nd) ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND

SCALE: 1"=30'
 N
 MARYLAND STATE PLANE
 DATUM (NAD 83/91)



**BUILDING RESTRICTION LINES AS PER THE APPROVED
 SIGNATURE SET TABLE OF SETBACKS:**

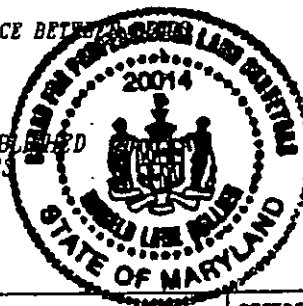
(AS PER T.H. REQ.)

- LEGEND:**
- B.R.L. PER SIGNATURE SET TABLE OF SETBACKS
 - ~~~~~ EXISTING BUILDING LINE.
 - P.U.E.
 - B.R.L. AS PER MIN. SPACE BETWEEN BLDGS.

- FROM ANY STREET 10'
- FRONT YARD: N/A
- SIDE YARD: 0'
- REAR YARD: AS SHOWN
- MIN. SPACE BETWEEN END BLDGS. 20/4'
- *MID-BLOCK SEPARATION BETWEEN
END UNITS MAY BE REDUCED TO 4'

I HEREBY CERTIFY THAT THE INFORMATION
 SHOWN HEREON IS CORRECT AND WAS ESTABLISHED
 USING ACCEPTED LAND SURVEYING PRACTICES

[Signature]
 RONALD L. COLLIER
 PROFESSIONAL LAND SURVEYOR
 MD. No. 20014



SITE PLAN NO: PHASE 2 8-02014
 SHEET NO: 8 OF 11
 DATE OF APPROVAL: 10/14/04



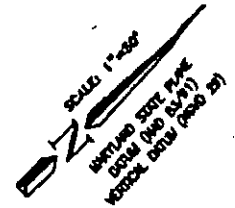
Charles P. Johnson & Associates, Inc.
 PLANNERS - ENGINEERS - LANDSCAPE ARCHITECTS - SURVEYORS
 191 ELTON ROAD SUITE 300 SILVER SPRING, MARYLAND 20903
 Phone: (301) 441-7000 E-mail: cjohnson@cpi.com Fax: (301) 441-0394
 FREDERICK, MD FARMERS VA

REFERENCE	Drawn by		Checked by	
	REB	REB	RLC	RLC
Plat Book N/A	Date 04/17/02		Record No.	
Plat No. 21971	Scale 1"=30'		31-162-88.33-4	

Dwg: N:\29100\dwg\88-33J1 Xref:

12

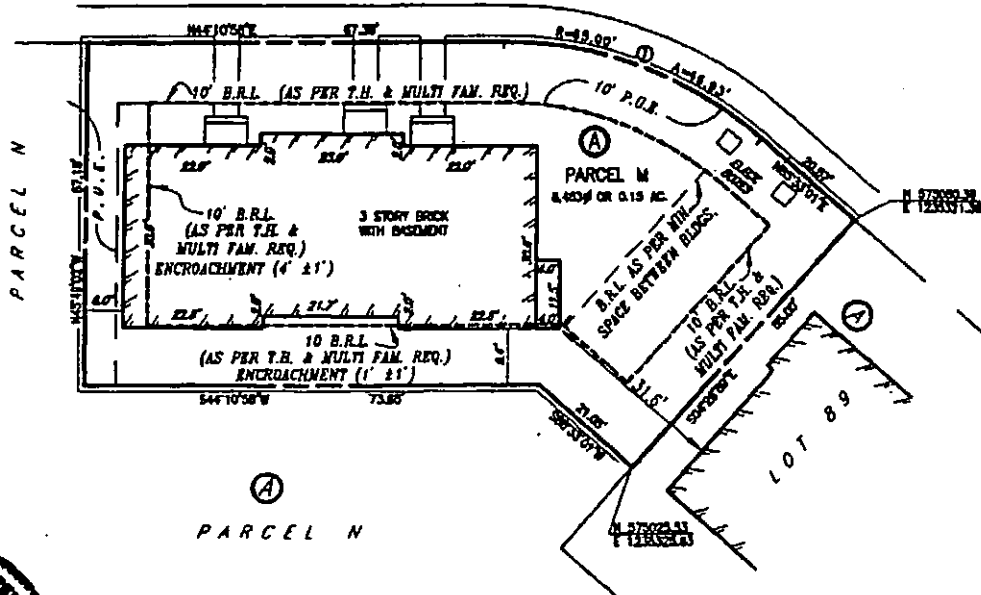
AS-BUILT SET BACK EXHIBIT
12916 thru 12926 CLARKSBURG SQUARE ROAD
PARCEL M, BLOCK A
CLARKSBURG TOWN CENTER
CLARKSBURG (2nd) ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND



CLARKSBURG SQUARE ROAD

(70' R/W)
P. NO. 22538 & 22631

BRANCHBRIER WAY
(20' R/W)



LEGEND:

- B.R.L. PER SIGNATURE SET TABLE OF SETBACKS
- EXISTING BUILDING LINE.
- P.U.E.
- B.R.L. AS PER MIN. SPACE BETWEEN BLDGS.

**BUILDING RESTRICTION LINES AS PER THE APPROVED
SIGNATURE SET TABLE OF SETBACKS:**

(AS PER MULTI FAM. REQ.)

FROM ANY STREET	10'
FRONT YARD:	10'
SIDE YARD:	10'/20'
REAR YARD:	AS SHOWN
MIN. SPACE BETWEEN END BLDGS.	30'

(AS PER T.H. REQ.)

FROM ANY STREET	10'
FRONT YARD:	N/A
SIDE YARD:	0'
REAR YARD:	AS SHOWN
MIN. SPACE BETWEEN END BLDGS.	20/4*

I HEREBY CERTIFY THAT THE INFORMATION
SHOWN HEREON IS CORRECT AND WAS ESTABLISHED
USING ACCEPTED LAND SURVEYING PRACTICES

Ronald L. Collier
RONALD L. COLLIER
PROFESSIONAL LAND SURVEYOR
MD. No. 20014

*MID-BLOCK SEPARATION BETWEEN
END UNITS MAY BE REDUCED TO 4'
SITE PLAN NO: PHASE 2 8-02014
SHEET NO: 5 OF 11
DATE OF APPROVAL: 10/14/04



Charles P. Johnson & Associates, Inc.
PLANNERS - ENGINEERS - LANDSCAPE ARCHITECTS - SURVEYORS
8751 ELTON ROAD SUITE 300 SILVER SPRING, MARYLAND 20903
Phone (301) 454-7000 E-mail: cpj@cpjassocs.com Fax (301) 454-0094
FREDERICK, MD FAIRFAX, VA

REFERENCE	Drawn by		Checked by	
	REB	REB	RLC	RLC
Plot Book N/A	Date 04/17/02		Record No. 31-162-88.37	
Plot No. 21871	Scale 1"=30'		PERCEL M (A)	

Dwg: N:\29100\dwg\88-PARC-M_A1 Xref:

13

ROAD

SCALE 1"=50'

WARTLAND STATE PLANE
DATUM MAD 63/61



LEGEND:

EXISTING BUILDING LINE.

P.U.E.

-B.R.L. AS PER MIN. SPACE BETWEEN BLDGS.

(AS PER MULTI FAM. REQ.)

(AS PER T.H. REQ.)

I HEREBY CERTIFY THAT THE INFORMATION SHOWN HEREON IS CORRECT AND WAS ESTABLISHED USING ACCEPTED LAND SURVEYING PRACTICES

DATE OF APPROVAL: 10/14/04

RONALD L. COLLIER
PROFESSIONAL LAND SURVEYOR
MD. No. 20014

Charles P. Johnson & Associates, Inc.
PLANNERS • ENGINEERS • LANDSCAPE ARCHITECTS • SURVEYORS
551 ELTON ROAD SUITE 300 SILVER SPRING MARYLAND 20910
Phone: 301-434-7000 E-mail: cpj@cpja.com Fax: 301-434-9394
FREDERICK, MD FAIRFAX, VA

Dwg: N:\29100\dwg\88-PARB_M1 Xref:

14



March 04, 2005

Mr. Wynn Whitthans
Maryland National Capital Park & Planning Commission
Montgomery County Planning Board
8787 Georgia Avenue, Silver Spring, MD 20910

Re: Clarksburg Town Center Lots 1S-10S
13022- 13040 Clarksburg Square Road

Dear Board Members:

We respectfully request that your Board resolve the lot line set back issues that affect the ten homebuyers and their families of Lots 1S – 10S in a timely manner that is favorable to these ten homeowners. The first settlement and transfer of title to these purchasers is scheduled for March 23rd.

Due to no fault on these families part, if these issues are not resolved timely and in their favor, they will be faced with extreme hardships, such as: loss of and/or change of end loan mortgage locks and higher interest costs; they have sold their previous residences and would be displaced without a family friendly atmosphere to home themselves; their children would be placed in jeopardy in that transportation to schooling and school related activities would become a serious problem for these families; and the income earners of these families would have to request special dispensation in terms of working hours, etc. from their employers in order to attempt to find immediate housing for their dependents.

These are only a few of the hardships that would be placed upon these families. The most insidious impact on them perhaps would be the emotional and mental strain on them and their familiar relations. The purchase of a new home is one of the most emotional choices that young families just starting off in life face. We, as a society, should encourage home ownership. We should not place unreasonable obstacles in front of it.

We sincerely request that reason and compassion be employed by each board member in their offices as public servants on the Planning Board to resolve these issues to the benefit of these ten families. Thank you in advance.

Cordially,

Kenneth J. Mergner
General Manager
Craftstar Homes
C: 703-929-4494
O: 703-663-4833





JUN 0 2 2

May 31, 2005

Caitlin Moriarty Young
710 Elmcroft Blvd.
Rockville, MA 20850

Re: 23902 A CATAWBA HILL DRIVE -023L

Dear Caitlin Moriarty Young:

Please accept this as Seller's notice that the professional staff of the Montgomery County Planning Board's (the "Board") has opined to Seller c/o Seller's counsel that the proposed height of the Condominium building (in which the above-referenced Property was to be contained) exceeds the maximum permissible height for buildings of its type approved for construction at Clarksburg Town Center project (the "Project"). This is a matter we reasonably and honestly believed had been taken care of by the land developer. That is the entity from whom we purchased the subject building lot and which approved this building type for our construction at this Project. Indeed, that reasonable and honest belief was further reinforced by the separate County permitting authority ("DPS"), which agency approved Seller's architectural plan for this building-type and has issued several prior building permits to construct essentially the same building elsewhere at this same Project. DPS has also allowed lawful occupancy on several of those nearly identical buildings at this Project. Nonetheless, a local citizens group has complained and, after investigation, the planning staff for the Board has now advised Seller that this building type violates the terms of the approved Site Plan regarding maximum building height.

While Seller does not concede the Board's position in that regard, nor can Seller ignore what it has been advised by the Planning Staff would be seen by the Board as a Site Plan violation if Seller proceeded to construct this allegedly violative building. Accordingly, Seller will not move forward with construction of the referenced improvements that comprise the Property described in your Condominium Sales Agreement ("Contract") unless and until expressly approved by the Board. Because that may not ever happen, Seller is hereby extending to you a right to cancel the Contract, so that you (its valued customer) will have the maximum opportunity to take advantage of other housing opportunities that may be available. If you choose to exercise this gratuitous option, please advise your sales representative and you will be refunded your deposit in return for a release. So that we can keep track of which customer(s) who contracted for a unit in this building will elect to cancel (and which will remain, despite these intervening events), this option to cancel will automatically expire on June 30, 2005 if not acted on before then.



Page 2

Please note that regardless of what you decide in this regard, Seller could still decide that your Contract must be cancelled under the terms of Contract paragraph 18(a). All of Seller's rights and entitlements to make that election at a future date will be reserved, regardless of what you decide in regard to this Buyer cancellation option.

Regardless of what you decide in this regard, we appreciate your business and sincerely regret any inconvenience or other impact this unavoidable circumstance has caused. If you elect to cancel and would like information on alternative Craftstar affiliated communities, your sales representative can provide you that information.

Sincerely,

T Center LLC

by Craftstar Homes, Inc., Managing Member

Via Certified Mail/Return Receipt Requested

cc: The Honorable Mike Knapp

Michele M. Rosenfeld, Esquire ✓

Charles R. Loehr, Director, Montgomery County Planning Board



May 31, 2005

The Ziglari Family Trust 22AUG00
14315 Cervantes Avenue
Darnestown, MD 20874

Re: 23902 B CATAWBA HILL DRIVE -024L

Dear The Ziglari Family Trust 22AUG00:

Please accept this as Seller's notice that the professional staff of the Montgomery County Planning Board's (the "Board") has opined to Seller c/o Seller's counsel that the proposed height of the Condominium building (in which the above-referenced Property was to be contained) exceeds the maximum permissible height for buildings of its type approved for construction at Clarksburg Town Center project (the "Project"). This is a matter we reasonably and honestly believed had been taken care of by the land developer. That is the entity from whom we purchased the subject building lot and which approved this building type for our construction at this Project. Indeed, that reasonable and honest belief was further reinforced by the separate County permitting authority ("DPS"), which agency approved Seller's architectural plan for this building-type and has issued several prior building permits to construct essentially the same building elsewhere at this same Project. DPS has also allowed lawful occupancy on several of those nearly identical buildings at this Project. Nonetheless, a local citizens group has complained and, after investigation, the planning staff for the Board has now advised Seller that this building type violates the terms of the approved Site Plan regarding maximum building height.

While Seller does not concede the Board's position in that regard, nor can Seller ignore what it has been advised by the Planning Staff would be seen by the Board as a Site Plan violation if Seller proceeded to construct this allegedly violative building. Accordingly, Seller will not move forward with construction of the referenced improvements that comprise the Property described in your Condominium Sales Agreement ("Contract") unless and until expressly approved by the Board. Because that may not ever happen, Seller is hereby extending to you a right to cancel the Contract, so that you (its valued customer) will have the maximum opportunity to take advantage of other housing opportunities that may be available. If you choose to exercise this gratuitous option, please advise your sales representative and you will be refunded your deposit in return for a release. So that we can keep track of which customer(s) who contracted for a unit in this building will elect to cancel (and which will remain, despite these intervening events), this option to cancel will automatically expire on June 30, 2005 if not acted on before then.



Page 2

Please note that regardless of what you decide in this regard, Seller could still decide that your Contract must be cancelled under the terms of Contract paragraph 18(a). All of Seller's rights and entitlements to make that election at a future date will be reserved, regardless of what you decide in regard to this Buyer cancellation option.

Regardless of what you decide in this regard, we appreciate your business and sincerely regret any inconvenience or other impact this unavoidable circumstance has caused. If you elect to cancel and would like information on alternative Craftstar affiliated communities, your sales representative can provide you that information.

Sincerely,

T Center LLC

by Craftstar Homes, Inc., Managing Member

Via Certified Mail/Return Receipt Requested

cc: The Honorable Mike Knapp
Michele M. Rosenfeld, Esquire ✓
Charles R. Loehr, Director, Montgomery County Planning Board



May 31, 2005

Qamar Anwar and Amer Qureshi
18045 Cottage Garden Dr Apt 101
Germantown, MD 20874

Re: 23904 A CATAWBA HILL DRIVE -025L

Dear Qamar Anwar and Amer Qureshi:

Please accept this as Seller's notice that the professional staff of the Montgomery County Planning Board's (the "Board") has opined to Seller c/o Seller's counsel that the proposed height of the Condominium building (in which the above-referenced Property was to be contained) exceeds the maximum permissible height for buildings of its type approved for construction at Clarksburg Town Center project (the "Project"). This is a matter we reasonably and honestly believed had been taken care of by the land developer. That is the entity from whom we purchased the subject building lot and which approved this building type for our construction at this Project. Indeed, that reasonable and honest belief was further reinforced by the separate County permitting authority ("DPS"), which agency approved Seller's architectural plan for this building-type and has issued several prior building permits to construct essentially the same building elsewhere at this same Project. DPS has also allowed lawful occupancy on several of those nearly identical buildings at this Project. Nonetheless, a local citizens group has complained and, after investigation, the planning staff for the Board has now advised Seller that this building type violates the terms of the approved Site Plan regarding maximum building height.

While Seller does not concede the Board's position in that regard, nor can Seller ignore what it has been advised by the Planning Staff would be seen by the Board as a Site Plan violation if Seller proceeded to construct this allegedly violative building. Accordingly, Seller will not move forward with construction of the referenced improvements that comprise the Property described in your Condominium Sales Agreement ("Contract") unless and until expressly approved by the Board. Because that may not ever happen, Seller is hereby extending to you a right to cancel the Contract, so that you (its valued customer) will have the maximum opportunity to take advantage of other housing opportunities that may be available. If you choose to exercise this gratuitous option, please advise your sales representative and you will be refunded your deposit in return for a release. So that we can keep track of which customer(s) who contracted for a unit in this building will elect to cancel (and which will remain, despite these intervening events), this option to cancel will automatically expire on June 30, 2005 if not acted on before then.



Page 2

Please note that regardless of what you decide in this regard, Seller could still decide that your Contract must be cancelled under the terms of Contract paragraph 18(a). All of Seller's rights and entitlements to make that election at a future date will be reserved, regardless of what you decide in regard to this Buyer cancellation option.

Regardless of what you decide in this regard, we appreciate your business and sincerely regret any inconvenience or other impact this unavoidable circumstance has caused. If you elect to cancel and would like information on alternative Craftstar affiliated communities, your sales representative can provide you that information.

Sincerely,

T Center LLC

by Craftstar Homes, Inc., Managing Member

Via Certified Mail/Return Receipt Requested

cc: The Honorable Mike Knapp
Michele M. Rosenfeld, Esquire ✓
Charles R. Loehr, Director, Montgomery County Planning Board



May 31, 2005

Serge Ohana and Noam Fischman
412 Autumn Wind Way
Rockville, MD 20850

Re: 23904 B CATAWBA HILL DRIVE -026L

Dear Serge Ohana and Noam Fischman:

Please accept this as Seller's notice that the professional staff of the Montgomery County Planning Board's (the "Board") has opined to Seller c/o Seller's counsel that the proposed height of the Condominium building (in which the above-referenced Property was to be contained) exceeds the maximum permissible height for buildings of its type approved for construction at Clarksburg Town Center project (the "Project"). This is a matter we reasonably and honestly believed had been taken care of by the land developer. That is the entity from whom we purchased the subject building lot and which approved this building type for our construction at this Project. Indeed, that reasonable and honest belief was further reinforced by the separate County permitting authority ("DPS"), which agency approved Seller's architectural plan for this building-type and has issued several prior building permits to construct essentially the same building elsewhere at this same Project. DPS has also allowed lawful occupancy on several of those nearly identical buildings at this Project. Nonetheless, a local citizens group has complained and, after investigation, the planning staff for the Board has now advised Seller that this building type violates the terms of the approved Site Plan regarding maximum building height.

While Seller does not concede the Board's position in that regard, nor can Seller ignore what it has been advised by the Planning Staff would be seen by the Board as a Site Plan violation if Seller proceeded to construct this allegedly violative building. Accordingly, Seller will not move forward with construction of the referenced improvements that comprise the Property described in your Condominium Sales Agreement ("Contract") unless and until expressly approved by the Board. Because that may not ever happen, Seller is hereby extending to you a right to cancel the Contract, so that you (its valued customer) will have the maximum opportunity to take advantage of other housing opportunities that may be available. If you choose to exercise this gratuitous option, please advise your sales representative and you will be refunded your deposit in return for a release. So that we can keep track of which customer(s) who contracted for a unit in this building will elect to cancel (and which will remain, despite these intervening events), this option to cancel will automatically expire on June 30, 2005 if not acted on before then.



Page 2

Please note that regardless of what you decide in this regard, Seller could still decide that your Contract must be cancelled under the terms of Contract paragraph 18(a). All of Seller's rights and entitlements to make that election at a future date will be reserved, regardless of what you decide in regard to this Buyer cancellation option.

Regardless of what you decide in this regard, we appreciate your business and sincerely regret any inconvenience or other impact this unavoidable circumstance has caused. If you elect to cancel and would like information on alternative Craftstar affiliated communities, your sales representative can provide you that information.

Sincerely,

T Center LLC

by Craftstar Homes, Inc., Managing Member

Via Certified Mail/Return Receipt Requested

cc: The Honorable Mike Knapp
Michele M. Rosenfeld, Esquire ✓
Charles R. Loehr, Director, Montgomery County Planning Board



May 31, 2005

Hee Choi
20703 Crystal Hill Circle APT #C
Germantown, MD 20874

Re: 23906 A CATAWBA HILL DRIVE -027L

Dear Hee Choi:

Please accept this as Seller's notice that the professional staff of the Montgomery County Planning Board's (the "Board") has opined to Seller c/o Seller's counsel that the proposed height of the Condominium building (in which the above-referenced Property was to be contained) exceeds the maximum permissible height for buildings of its type approved for construction at Clarksburg Town Center project (the "Project"). This is a matter we reasonably and honestly believed had been taken care of by the land developer. That is the entity from whom we purchased the subject building lot and which approved this building type for our construction at this Project. Indeed, that reasonable and honest belief was further reinforced by the separate County permitting authority ("DPS"), which agency approved Seller's architectural plan for this building-type and has issued several prior building permits to construct essentially the same building elsewhere at this same Project. DPS has also allowed lawful occupancy on several of those nearly identical buildings at this Project. Nonetheless, a local citizens group has complained and, after investigation, the planning staff for the Board has now advised Seller that this building type violates the terms of the approved Site Plan regarding maximum building height.

While Seller does not concede the Board's position in that regard, nor can Seller ignore what it has been advised by the Planning Staff would be seen by the Board as a Site Plan violation if Seller proceeded to construct this allegedly violative building. Accordingly, Seller will not move forward with construction of the referenced improvements that comprise the Property described in your Condominium Sales Agreement ("Contract") unless and until expressly approved by the Board. Because that may not ever happen, Seller is hereby extending to you a right to cancel the Contract, so that you (its valued customer) will have the maximum opportunity to take advantage of other housing opportunities that may be available. If you choose to exercise this gratuitous option, please advise your sales representative and you will be refunded your deposit in return for a release. So that we can keep track of which customer(s) who contracted for a unit in this building will elect to cancel (and which will remain, despite these intervening events), this option to cancel will automatically expire on June 30, 2005 if not acted on before then.



Page 2

Please note that regardless of what you decide in this regard, Seller could still decide that your Contract must be cancelled under the terms of Contract paragraph 18(a). All of Seller's rights and entitlements to make that election at a future date will be reserved, regardless of what you decide in regard to this Buyer cancellation option.

Regardless of what you decide in this regard, we appreciate your business and sincerely regret any inconvenience or other impact this unavoidable circumstance has caused. If you elect to cancel and would like information on alternative Craftstar affiliated communities, your sales representative can provide you that information.

Sincerely,

T Center LLC

by Craftstar Homes, Inc., Managing Member

Via Certified Mail/Return Receipt Requested

cc: The Honorable Mike Knapp
Michele M. Rosenfeld, Esquire ✓
Charles R. Loehr, Director, Montgomery County Planning Board



May 31, 2005

Lynn Davenport and Delroy Marsh
19644 Framingham Drive
Gaithersburg, MD 20879

Re: 23906 B CATAWBA HILL DRIVE -028L

Dear Lynn Davenport and Delroy Marsh:

Please accept this as Seller's notice that the professional staff of the Montgomery County Planning Board's (the "Board") has opined to Seller c/o Seller's counsel that the proposed height of the Condominium building (in which the above-referenced Property was to be contained) exceeds the maximum permissible height for buildings of its type approved for construction at Clarksburg Town Center project (the "Project"). This is a matter we reasonably and honestly believed had been taken care of by the land developer. That is the entity from whom we purchased the subject building lot and which approved this building type for our construction at this Project. Indeed, that reasonable and honest belief was further reinforced by the separate County permitting authority ("DPS"), which agency approved Seller's architectural plan for this building-type and has issued several prior building permits to construct essentially the same building elsewhere at this same Project. DPS has also allowed lawful occupancy on several of those nearly identical buildings at this Project. Nonetheless, a local citizens group has complained and, after investigation, the planning staff for the Board has now advised Seller that this building type violates the terms of the approved Site Plan regarding maximum building height.

While Seller does not concede the Board's position in that regard, nor can Seller ignore what it has been advised by the Planning Staff would be seen by the Board as a Site Plan violation if Seller proceeded to construct this allegedly violative building. Accordingly, Seller will not move forward with construction of the referenced improvements that comprise the Property described in your Condominium Sales Agreement ("Contract") unless and until expressly approved by the Board. Because that may not ever happen, Seller is hereby extending to you a right to cancel the Contract, so that you (its valued customer) will have the maximum opportunity to take advantage of other housing opportunities that may be available. If you choose to exercise this gratuitous option, please advise your sales representative and you will be refunded your deposit in return for a release. So that we can keep track of which customer(s) who contracted for a unit in this building will elect to cancel (and which will remain, despite these intervening events), this option to cancel will automatically expire on June 30, 2005 if not acted on before then.



Page 2

Please note that regardless of what you decide in this regard, Seller could still decide that your Contract must be cancelled under the terms of Contract paragraph 18(a). All of Seller's rights and entitlements to make that election at a future date will be reserved, regardless of what you decide in regard to this Buyer cancellation option.

Regardless of what you decide in this regard, we appreciate your business and sincerely regret any inconvenience or other impact this unavoidable circumstance has caused. If you elect to cancel and would like information on alternative Craftstar affiliated communities, your sales representative can provide you that information.

Sincerely,

T Center LLC

by Craftstar Homes, Inc., Managing Member

Via Certified Mail/Return Receipt Requested

cc: The Honorable Mike Knapp
Michele M. Rosenfeld, Esquire ✓
Charles R. Loehr, Director, Montgomery County Planning Board



May 31, 2005

Ricardo Todd and Veronica Todd
8501 Ivoryton Way
Gaithersburg, MD 20879

Re: 23908 A CATAWBA HILL DRIVE -029L

Dear Ricardo Todd and Veronica Todd:

Please accept this as Seller's notice that the professional staff of the Montgomery County Planning Board's (the "Board") has opined to Seller c/o Seller's counsel that the proposed height of the Condominium building (in which the above-referenced Property was to be contained) exceeds the maximum permissible height for buildings of its type approved for construction at Clarksburg Town Center project (the "Project"). This is a matter we reasonably and honestly believed had been taken care of by the land developer. That is the entity from whom we purchased the subject building lot and which approved this building type for our construction at this Project. Indeed, that reasonable and honest belief was further reinforced by the separate County permitting authority ("DPS"), which agency approved Seller's architectural plan for this building-type and has issued several prior building permits to construct essentially the same building elsewhere at this same Project. DPS has also allowed lawful occupancy on several of those nearly identical buildings at this Project. Nonetheless, a local citizens group has complained and, after investigation, the planning staff for the Board has now advised Seller that this building type violates the terms of the approved Site Plan regarding maximum building height.

While Seller does not concede the Board's position in that regard, nor can Seller ignore what it has been advised by the Planning Staff would be seen by the Board as a Site Plan violation if Seller proceeded to construct this allegedly violative building. Accordingly, Seller will not move forward with construction of the referenced improvements that comprise the Property described in your Condominium Sales Agreement ("Contract") unless and until expressly approved by the Board. Because that may not ever happen, Seller is hereby extending to you a right to cancel the Contract, so that you (its valued customer) will have the maximum opportunity to take advantage of other housing opportunities that may be available. If you choose to exercise this gratuitous option, please advise your sales representative and you will be refunded your deposit in return for a release. So that we can keep track of which customer(s) who contracted for a unit in this building will elect to cancel (and which will remain, despite these intervening events), this option to cancel will automatically expire on June 30, 2005 if not acted on before then.



Page 2

Please note that regardless of what you decide in this regard, Seller could still decide that your Contract must be cancelled under the terms of Contract paragraph 18(a). All of Seller's rights and entitlements to make that election at a future date will be reserved, regardless of what you decide in regard to this Buyer cancellation option.

Regardless of what you decide in this regard, we appreciate your business and sincerely regret any inconvenience or other impact this unavoidable circumstance has caused. If you elect to cancel and would like information on alternative Craftstar affiliated communities, your sales representative can provide you that information.

Sincerely,

T Center LLC

by Craftstar Homes, Inc., Managing Member

Via Certified Mail/Return Receipt Requested

cc: The Honorable Mike Knapp
Michele M. Rosenfeld, Esquire ✓
Charles R. Loehr, Director, Montgomery County Planning Board



May 31, 2005 .

Siva Reddy and Bindu Tupakula
18701 Sparkling Water Dr
Germantown, MD 20874

Re: 23908 B CATAWBA HILL DRIVE -030L

Dear Siva Reddy and Bindu Tupakula:

Please accept this as Seller's notice that the professional staff of the Montgomery County Planning Board's (the "Board") has opined to Seller c/o Seller's counsel that the proposed height of the Condominium building (in which the above-referenced Property was to be contained) exceeds the maximum permissible height for buildings of its type approved for construction at Clarksburg Town Center project (the "Project"). This is a matter we reasonably and honestly believed had been taken care of by the land developer. That is the entity from whom we purchased the subject building lot and which approved this building type for our construction at this Project. Indeed, that reasonable and honest belief was further reinforced by the separate County permitting authority ("DPS"), which agency approved Seller's architectural plan for this building-type and has issued several prior building permits to construct essentially the same building elsewhere at this same Project. DPS has also allowed lawful occupancy on several of those nearly identical buildings at this Project. Nonetheless, a local citizens group has complained and, after investigation, the planning staff for the Board has now advised Seller that this building type violates the terms of the approved Site Plan regarding maximum building height.

While Seller does not concede the Board's position in that regard, nor can Seller ignore what it has been advised by the Planning Staff would be seen by the Board as a Site Plan violation if Seller proceeded to construct this allegedly violative building. Accordingly, Seller will not move forward with construction of the referenced improvements that comprise the Property described in your Condominium Sales Agreement ("Contract") unless and until expressly approved by the Board. Because that may not ever happen, Seller is hereby extending to you a right to cancel the Contract, so that you (its valued customer) will have the maximum opportunity to take advantage of other housing opportunities that may be available. If you choose to exercise this gratuitous option, please advise your sales representative and you will be refunded your deposit in return for a release. So that we can keep track of which customer(s) who contracted for a unit in this building will elect to cancel (and which will remain, despite these intervening events), this option to cancel will automatically expire on June 30, 2005 if not acted on before then.



Page 2

Please note that regardless of what you decide in this regard, Seller could still decide that your Contract must be cancelled under the terms of Contract paragraph 18(a). All of Seller's rights and entitlements to make that election at a future date will be reserved, regardless of what you decide in regard to this Buyer cancellation option.

Regardless of what you decide in this regard, we appreciate your business and sincerely regret any inconvenience or other impact this unavoidable circumstance has caused. If you elect to cancel and would like information on alternative Craftstar affiliated communities, your sales representative can provide you that information.

Sincerely,

T Center LLC

by Craftstar Homes, Inc., Managing Member

Via Certified Mail/Return Receipt Requested

cc: The Honorable Mike Knapp

Michele M. Rosenfeld, Esquire ✓

Charles R. Loehr, Director, Montgomery County Planning Board



May 31, 2005

Amy Friece and Ken Friece
13112 Millhaven Pl Unit C
Germantown, MD 20874

Re: 23910 A CATAWBA HILL DRIVE -031L

Dear Amy Friece and Ken Friece:

Please accept this as Seller's notice that the professional staff of the Montgomery County Planning Board's (the "Board") has opined to Seller c/o Seller's counsel that the proposed height of the Condominium building (in which the above-referenced Property was to be contained) exceeds the maximum permissible height for buildings of its type approved for construction at Clarksburg Town Center project (the "Project"). This is a matter we reasonably and honestly believed had been taken care of by the land developer. That is the entity from whom we purchased the subject building lot and which approved this building type for our construction at this Project. Indeed, that reasonable and honest belief was further reinforced by the separate County permitting authority ("DPS"), which agency approved Seller's architectural plan for this building-type and has issued several prior building permits to construct essentially the same building elsewhere at this same Project. DPS has also allowed lawful occupancy on several of those nearly identical buildings at this Project. Nonetheless, a local citizens group has complained and, after investigation, the planning staff for the Board has now advised Seller that this building type violates the terms of the approved Site Plan regarding maximum building height.

While Seller does not concede the Board's position in that regard, nor can Seller ignore what it has been advised by the Planning Staff would be seen by the Board as a Site Plan violation if Seller proceeded to construct this allegedly violative building. Accordingly, Seller will not move forward with construction of the referenced improvements that comprise the Property described in your Condominium Sales Agreement ("Contract") unless and until expressly approved by the Board. Because that may not ever happen, Seller is hereby extending to you a right to cancel the Contract, so that you (its valued customer) will have the maximum opportunity to take advantage of other housing opportunities that may be available. If you choose to exercise this gratuitous option, please advise your sales representative and you will be refunded your deposit in return for a release. So that we can keep track of which customer(s) who contracted for a unit in this building will elect to cancel (and which will remain, despite these intervening events), this option to cancel will automatically expire on June 30, 2005 if not acted on before then.



Page 2

Please note that regardless of what you decide in this regard, Seller could still decide that your Contract must be cancelled under the terms of Contract paragraph 18(a). All of Seller's rights and entitlements to make that election at a future date will be reserved, regardless of what you decide in regard to this Buyer cancellation option.

Regardless of what you decide in this regard, we appreciate your business and sincerely regret any inconvenience or other impact this unavoidable circumstance has caused. If you elect to cancel and would like information on alternative Craftstar affiliated communities, your sales representative can provide you that information.

Sincerely,

T Center LLC

by Craftstar Homes, Inc., Managing Member

Via Certified Mail/Return Receipt Requested

cc: The Honorable Mike Knapp

Michele M. Rosenfeld, Esquire ✓

Charles R. Loehr, Director, Montgomery County Planning Board



May 31, 2005

George Spanos
12809 Pinnacle Drive
Germantown, MD 20874

Re: 23910 B CATAWBA HILL DRIVE -032L

Dear George Spanos:

Please accept this as Seller's notice that the professional staff of the Montgomery County Planning Board's (the "Board") has opined to Seller c/o Seller's counsel that the proposed height of the Condominium building (in which the above-referenced Property was to be contained) exceeds the maximum permissible height for buildings of its type approved for construction at Clarksburg Town Center project (the "Project"). This is a matter we reasonably and honestly believed had been taken care of by the land developer. That is the entity from whom we purchased the subject building lot and which approved this building type for our construction at this Project. Indeed, that reasonable and honest belief was further reinforced by the separate County permitting authority ("DPS"), which agency approved Seller's architectural plan for this building-type and has issued several prior building permits to construct essentially the same building elsewhere at this same Project. DPS has also allowed lawful occupancy on several of those nearly identical buildings at this Project. Nonetheless, a local citizens group has complained and, after investigation, the planning staff for the Board has now advised Seller that this building type violates the terms of the approved Site Plan regarding maximum building height.

While Seller does not concede the Board's position in that regard, nor can Seller ignore what it has been advised by the Planning Staff would be seen by the Board as a Site Plan violation if Seller proceeded to construct this allegedly violative building. Accordingly, Seller will not move forward with construction of the referenced improvements that comprise the Property described in your Condominium Sales Agreement ("Contract") unless and until expressly approved by the Board. Because that may not ever happen, Seller is hereby extending to you a right to cancel the Contract, so that you (its valued customer) will have the maximum opportunity to take advantage of other housing opportunities that may be available. If you choose to exercise this gratuitous option, please advise your sales representative and you will be refunded your deposit in return for a release. So that we can keep track of which customer(s) who contracted for a unit in this building will elect to cancel (and which will remain, despite these intervening events), this option to cancel will automatically expire on June 30, 2005 if not acted on before then.



Page 2

Please note that regardless of what you decide in this regard, Seller could still decide that your Contract must be cancelled under the terms of Contract paragraph 18(a). All of Seller's rights and entitlements to make that election at a future date will be reserved, regardless of what you decide in regard to this Buyer cancellation option.

Regardless of what you decide in this regard, we appreciate your business and sincerely regret any inconvenience or other impact this unavoidable circumstance has caused. If you elect to cancel and would like information on alternative Craftstar affiliated communities, your sales representative can provide you that information.

Sincerely,

T Center LLC

by Craftstar Homes, Inc., Managing Member

Via Certified Mail/Return Receipt Requested

cc: The Honorable Mike Knapp

Michele M. Rosenfeld, Esquire ✓

Charles R. Loehr, Director, Montgomery County Planning Board



May 31, 2005

Lei Chen and Juan Ma
14010 Cove Lane 302
Rockville, MD 20851

Re: 23912 B CATAWBA HILL DRIVE -034L

Dear Lei Chen and Juan Ma:

Please accept this as Seller's notice that the professional staff of the Montgomery County Planning Board's (the "Board") has opined to Seller c/o Seller's counsel that the proposed height of the Condominium building (in which the above-referenced Property was to be contained) exceeds the maximum permissible height for buildings of its type approved for construction at Clarksburg Town Center project (the "Project"). This is a matter we reasonably and honestly believed had been taken care of by the land developer. That is the entity from whom we purchased the subject building lot and which approved this building type for our construction at this Project. Indeed, that reasonable and honest belief was further reinforced by the separate County permitting authority ("DPS"), which agency approved Seller's architectural plan for this building-type and has issued several prior building permits to construct essentially the same building elsewhere at this same Project. DPS has also allowed lawful occupancy on several of those nearly identical buildings at this Project. Nonetheless, a local citizens group has complained and, after investigation, the planning staff for the Board has now advised Seller that this building type violates the terms of the approved Site Plan regarding maximum building height.

While Seller does not concede the Board's position in that regard, nor can Seller ignore what it has been advised by the Planning Staff would be seen by the Board as a Site Plan violation if Seller proceeded to construct this allegedly violative building. Accordingly, Seller will not move forward with construction of the referenced improvements that comprise the Property described in your Condominium Sales Agreement ("Contract") unless and until expressly approved by the Board. Because that may not ever happen, Seller is hereby extending to you a right to cancel the Contract, so that you (its valued customer) will have the maximum opportunity to take advantage of other housing opportunities that may be available. If you choose to exercise this gratuitous option, please advise your sales representative and you will be refunded your deposit in return for a release. So that we can keep track of which customer(s) who contracted for a unit in this building will elect to cancel (and which will remain, despite these intervening events), this option to cancel will automatically expire on June 30, 2005 if not acted on before then.



Page 2

Please note that regardless of what you decide in this regard, Seller could still decide that your Contract must be cancelled under the terms of Contract paragraph 18(a). All of Seller's rights and entitlements to make that election at a future date will be reserved, regardless of what you decide in regard to this Buyer cancellation option.

Regardless of what you decide in this regard, we appreciate your business and sincerely regret any inconvenience or other impact this unavoidable circumstance has caused. If you elect to cancel and would like information on alternative Craftstar affiliated communities, your sales representative can provide you that information.

Sincerely,

T Center LLC

by Craftstar Homes, Inc., Managing Member

Via Certified Mail/Return Receipt Requested

cc: The Honorable Mike Knapp

Michele M. Rosenfeld, Esquire ✓

Charles R. Loehr, Director, Montgomery County Planning Board



May 31, 2005

Alireza Ganji and Nazila Javaherian
1918 Freemont Lane
Vienna, VA 22182

Re: 23912 A CATAWBA HILL DRIVE -033L

Dear Alireza Ganji and Nazila Javaherian:

Please accept this as Seller's notice that the professional staff of the Montgomery County Planning Board's (the "Board") has opined to Seller c/o Seller's counsel that the proposed height of the Condominium building (in which the above-referenced Property was to be contained) exceeds the maximum permissible height for buildings of its type approved for construction at Clarksburg Town Center project (the "Project"). This is a matter we reasonably and honestly believed had been taken care of by the land developer. That is the entity from whom we purchased the subject building lot and which approved this building type for our construction at this Project. Indeed, that reasonable and honest belief was further reinforced by the separate County permitting authority ("DPS"), which agency approved Seller's architectural plan for this building-type and has issued several prior building permits to construct essentially the same building elsewhere at this same Project. DPS has also allowed lawful occupancy on several of those nearly identical buildings at this Project. Nonetheless, a local citizens group has complained and, after investigation, the planning staff for the Board has now advised Seller that this building type violates the terms of the approved Site Plan regarding maximum building height.

While Seller does not concede the Board's position in that regard, nor can Seller ignore what it has been advised by the Planning Staff would be seen by the Board as a Site Plan violation if Seller proceeded to construct this allegedly violative building. Accordingly, Seller will not move forward with construction of the referenced improvements that comprise the Property described in your Condominium Sales Agreement ("Contract") unless and until expressly approved by the Board. Because that may not ever happen, Seller is hereby extending to you a right to cancel the Contract, so that you (its valued customer) will have the maximum opportunity to take advantage of other housing opportunities that may be available. If you choose to exercise this gratuitous option, please advise your sales representative and you will be refunded your deposit in return for a release. So that we can keep track of which customer(s) who contracted for a unit in this building will elect to cancel (and which will remain, despite these intervening events), this option to cancel will automatically expire on June 30, 2005 if not acted on before then.



Page 2

Please note that regardless of what you decide in this regard, Seller could still decide that your Contract must be cancelled under the terms of Contract paragraph 18(a). All of Seller's rights and entitlements to make that election at a future date will be reserved, regardless of what you decide in regard to this Buyer cancellation option.

Regardless of what you decide in this regard, we appreciate your business and sincerely regret any inconvenience or other impact this unavoidable circumstance has caused. If you elect to cancel and would like information on alternative Craftstar affiliated communities, your sales representative can provide you that information.

Sincerely,

T Center LLC

by Craftstar Homes, Inc., Managing Member

Via Certified Mail/Return Receipt Requested

cc: The Honorable Mike Knapp

Michele M. Rosenfeld, Esquire ✓

Charles R. Loehr, Director, Montgomery County Planning Board



May 31, 2005

Stephane Duquesnoy
12917 Clarks Crossing Drive
Clarksburg, MD 20871

Re: 23914 A CATAWBA HILL DRIVE -035L

Dear Stephane Duquesnoy:

Please accept this as Seller's notice that the professional staff of the Montgomery County Planning Board's (the "Board") has opined to Seller c/o Seller's counsel that the proposed height of the Condominium building (in which the above-referenced Property was to be contained) exceeds the maximum permissible height for buildings of its type approved for construction at Clarksburg Town Center project (the "Project"). This is a matter we reasonably and honestly believed had been taken care of by the land developer. That is the entity from whom we purchased the subject building lot and which approved this building type for our construction at this Project. Indeed, that reasonable and honest belief was further reinforced by the separate County permitting authority ("DPS"), which agency approved Seller's architectural plan for this building-type and has issued several prior building permits to construct essentially the same building elsewhere at this same Project. DPS has also allowed lawful occupancy on several of those nearly identical buildings at this Project. Nonetheless, a local citizens group has complained and, after investigation, the planning staff for the Board has now advised Seller that this building type violates the terms of the approved Site Plan regarding maximum building height.

While Seller does not concede the Board's position in that regard, nor can Seller ignore what it has been advised by the Planning Staff would be seen by the Board as a Site Plan violation if Seller proceeded to construct this allegedly violative building. Accordingly, Seller will not move forward with construction of the referenced improvements that comprise the Property described in your Condominium Sales Agreement ("Contract") unless and until expressly approved by the Board. Because that may not ever happen, Seller is hereby extending to you a right to cancel the Contract, so that you (its valued customer) will have the maximum opportunity to take advantage of other housing opportunities that may be available. If you choose to exercise this gratuitous option, please advise your sales representative and you will be refunded your deposit in return for a release. So that we can keep track of which customer(s) who contracted for a unit in this building will elect to cancel (and which will remain, despite these intervening events), this option to cancel will automatically expire on June 30, 2005 if not acted on before then.



Page 2

Please note that regardless of what you decide in this regard, Seller could still decide that your Contract must be cancelled under the terms of Contract paragraph 18(a). All of Seller's rights and entitlements to make that election at a future date will be reserved, regardless of what you decide in regard to this Buyer cancellation option.

Regardless of what you decide in this regard, we appreciate your business and sincerely regret any inconvenience or other impact this unavoidable circumstance has caused. If you elect to cancel and would like information on alternative Craftstar affiliated communities, your sales representative can provide you that information.

Sincerely,

T Center LLC

by Craftstar Homes, Inc., Managing Member

Via Certified Mail/Return Receipt Requested

cc: The Honorable Mike Knapp
Michele M. Rosenfeld, Esquire ✓
Charles R. Loehr, Director, Montgomery County Planning Board



May 31, 2005

Gail Simpson
1900 MoundPlace South
St.Petersburg, FL 33712

Re: 23914 B CATAWBA HILL DRIVE -036L

Dear Gail Simpson:

Please accept this as Seller's notice that the professional staff of the Montgomery County Planning Board's (the "Board") has opined to Seller c/o Seller's counsel that the proposed height of the Condominium building (in which the above-referenced Property was to be contained) exceeds the maximum permissible height for buildings of its type approved for construction at Clarksburg Town Center project (the "Project"). This is a matter we reasonably and honestly believed had been taken care of by the land developer. That is the entity from whom we purchased the subject building lot and which approved this building type for our construction at this Project. Indeed, that reasonable and honest belief was further reinforced by the separate County permitting authority ("DPS"), which agency approved Seller's architectural plan for this building-type and has issued several prior building permits to construct essentially the same building elsewhere at this same Project. DPS has also allowed lawful occupancy on several of those nearly identical buildings at this Project. Nonetheless, a local citizens group has complained and, after investigation, the planning staff for the Board has now advised Seller that this building type violates the terms of the approved Site Plan regarding maximum building height.

While Seller does not concede the Board's position in that regard, nor can Seller ignore what it has been advised by the Planning Staff would be seen by the Board as a Site Plan violation if Seller proceeded to construct this allegedly violative building. Accordingly, Seller will not move forward with construction of the referenced improvements that comprise the Property described in your Condominium Sales Agreement ("Contract") unless and until expressly approved by the Board. Because that may not ever happen, Seller is hereby extending to you a right to cancel the Contract, so that you (its valued customer) will have the maximum opportunity to take advantage of other housing opportunities that may be available. If you choose to exercise this gratuitous option, please advise your sales representative and you will be refunded your deposit in return for a release. So that we can keep track of which customer(s) who contracted for a unit in this building will elect to cancel (and which will remain, despite these intervening events), this option to cancel will automatically expire on June 30, 2005 if not acted on before then.



May 31, 2005

Gail Simpson
1900 MoundPlace South
St. Petersburg, FL 33712

Re: 23914 B CATAWBA HILL DRIVE -036L

Dear Gail Simpson:

Please accept this as Seller's notice that the professional staff of the Montgomery County Planning Board's (the "Board") has opined to Seller c/o Seller's counsel that the proposed height of the Condominium building (in which the above-referenced Property was to be contained) exceeds the maximum permissible height for buildings of its type approved for construction at Clarksburg Town Center project (the "Project"). This is a matter we reasonably and honestly believed had been taken care of by the land developer. That is the entity from whom we purchased the subject building lot and which approved this building type for our construction at this Project. Indeed, that reasonable and honest belief was further reinforced by the separate County permitting authority ("DPS"), which agency approved Seller's architectural plan for this building-type and has issued several prior building permits to construct essentially the same building elsewhere at this same Project. DPS has also allowed lawful occupancy on several of those nearly identical buildings at this Project. Nonetheless, a local citizens group has complained and, after investigation, the planning staff for the Board has now advised Seller that this building type violates the terms of the approved Site Plan regarding maximum building height.

While Seller does not concede the Board's position in that regard, nor can Seller ignore what it has been advised by the Planning Staff would be seen by the Board as a Site Plan violation if Seller proceeded to construct this allegedly violative building. Accordingly, Seller will not move forward with construction of the referenced improvements that comprise the Property described in your Condominium Sales Agreement ("Contract") unless and until expressly approved by the Board. Because that may not ever happen, Seller is hereby extending to you a right to cancel the Contract, so that you (its valued customer) will have the maximum opportunity to take advantage of other housing opportunities that may be available. If you choose to exercise this gratuitous option, please advise your sales representative and you will be refunded your deposit in return for a release. So that we can keep track of which customer(s) who contracted for a unit in this building will elect to cancel (and which will remain, despite these intervening events), this option to cancel will automatically expire on June 30, 2005 if not acted on before then.



Please note that regardless of what you decide in this regard, Seller could still decide that your Contract must be cancelled under the terms of Contract paragraph 18(a). All of Seller's rights and entitlements to make that election at a future date will be reserved, regardless of what you decide in regard to this Buyer cancellation option.

Regardless of what you decide in this regard, we appreciate your business and sincerely regret any inconvenience or other impact this unavoidable circumstance has caused. If you elect to cancel and would like information on alternative Craftstar affiliated communities, your sales representative can provide you that information.

Sincerely,

T Center LLC

by Craftstar Homes, Inc., Managing Member

Via Certified Mail/Return Receipt Requested

cc: The Honorable Mike Knapp
Michele M. Rosenfeld, Esquire ✓
Charles R. Loehr, Director, Montgomery County Planning Board